

THE CHILD AND THE INDIAN STATE

RITA PANICKER

PAPER PRESENTED AT THE
SECOND INTERNATIONAL CONFERENCE ON CHILDREN'S OMBUDSWORK
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INTRODUCTION

The last decade was a traumatising ten years for children of the world which saw 1.5 million children being killed in wars, 4 million disavled and 12 million left homeless.¹ The status of the Indian child is not any better.

In the four decades of development planning, India still remains one of the poorest countries with a per capita income of US \$ 300.

The population of India has increased from 342 million since independence (1947) to 685 million in 1981 and is 844 million in 1991 (Source : Cenus of India, 1991) of which the child population is 298 million. The implications of such a population growth are additional needs of employment, food, sheleter, health ccare and schooling.

1. UNICEF, State of the World's Children Report,
New Delhi, 1992.

The estimated infant mortality rates for the country is 102 in rural areas, 61 in urban, and combined 94 as of 1988 (Source : Registrar General, Sample Registration System). Mortality of children under 5 years annually is around 4 million.

According to the 1981 Census, India has 272 million children between the ages of 0-14, which nearly accounts for 42% of the population. Out of this, 97 are below 5 years of age. 175 million children should be in schools as per mandate of Article 45 of the Constitution of India which obliges the State to ensure that all children under 14 years of age are in schools. Whereas, only 42.39 million children were attending schools (1981 Census). The majority i.e. 132.31 million were not in schools in 1981.

The school enrolment figures do not tell the whole story as it does not reveal how many really attended, continued, stagnated or dropped out. It is estimated that currently 50% of the students drop out by the end of Class V. The approach paper to the Eighth Five Year Plan puts the drop-out rate at 70% between the ages of 6-14 years. It has been computed that the number of 6-14 year olds out of school has increased from 29 million in 1966 to 48 million in 1978, to 75 million in 1981. Of these 75 million, 65 million are in the rural areas and 37 million of them are rural girls.

'The reasons for this apathy lies in the lack of political will of the State, politicians, intellectuals and the middle class towards child labour and compulsory primary school education. ²

The classic arguments thrown around is that (1) a poor family do not have the "luxury" to send their children to school as they have to work for the survival of the family. Is it really ^{so}? Is the wage of a child worker that crucial for its family's survival, or is it crucial for the child's own survival.

(2) The present educational system is so irrelevant for the poor. The poor parents feel there is no value in sending a child to school as it ultimately does not fetch him a job. The point is it true only of the poor?

(3) The present educational system alienates the child from his environment and traditional occupations. Are we trying to maintain the statusquo? This argument clearly smacks of racism - the poor must remain poor, they have no right to upward mobility.

Most of the school going children who are not in school would be in the labour force either within the household or outside. The children of poor families are not only forced to work under exploitative conditions, but are also forced into bonded labour. Sexual abuse of children appears not to be uncommon, within families and institutions. In urban areas, children of prostitutes are forced into

2. Weiner M., The Child and the State in India,
Oxford University Press, Delhi, India 1991, Page. 15.

the same profession. street children - both girls and boys are victims of pimps and homosexuals. The situation of girl children is far more oppressive and exploitative than boys.

GIRL CHILDREN

Demographic picture is a good indicator to show the status of women in a society. In India, the sex ratio (number of females per 1000 males) has been declining steadily through the decades. In 1921, it was 955 to 1000 males; in 1944 it was 945; in 1961 it was 941, in 1981 it was 933 and in 1991 it is 929 females per 1000 males.

There is a direct link between sex ratio and the mortality pattern among female children and adults. More girls die than boys. Of over 13 million girls born every year, less than 11 million will be alive by their fifteenth year. Worse still is the practice of female infanticide and foeticide where a girl child is not even allowed to be born. Maharashtra is the first and only state in India to ban sex determination tests. A proposed Central legislation banning sex determination tests to prevent its misuse for female foeticide was introduced in the Parliament on 27th December 1990.

The legislation seeks to ban all advertisements of such pre-natal techniques while permitting the use only in approved and licensed genetic counselling centres, laboratories and clinics. Violation of the legislation will be considered a "cognizable, non-bailable and non-compoundable" offence.

While banning the use of pre-natal diagnostic techniques for predicting the sex of the foetus, the Bill also stipulates that these tests can only be used for detecting specific abnormalities and under specific conditions.

A 15-member Central Supervisory Board headed by the Health Minister and comprising officials, experts, representatives from the States and voluntary organizations is also to be set up. According to the legislation, this Board will be required to review the implementation of the legislation, suggest improvements, recommend necessary changes and create public awareness against female foeticide.

Besides, the Bill also provides for punishment for those violating its provisions. The owner of a centre or a clinic conducting the tests without registration can attract simple imprisonment for two years and a fine of Rs.10,000 for the first offence to be extended to five years and fine of Rs.50,000 for a subsequent offence. The doctor who contravenes the Bill's provisions shall be reported to the Medical Council for appropriate action.

There are other twists to the problem of unplanned development. Carefully monitored studies show that instances of malnutrition among girl children are considerably higher in irrigated villages as opposed to non-irrigated ones because of the switch from growing traditional protein-rich cereal crops to high value cash crops like cotton and mustard.

The cause of malnutrition amongst girls is not so much due to the lack of food as lack of access to it. Several micro-level studies have found that a girl's diet is inferior, both in quality and quantity, to a boy's diet.

The situation of girls as compared to boys in terms of opportunities for growth and development is unenviable. Education in the case of a girl is an expendable option. Fewer girls than boys enrol in school. Of the 89 million girls in 5-15 age group in 1985 (Census projection), only 14.9 million girls are in school (i.e. 33.2 million enrolled in 1984-85, but 55.5% dropped out according to the Women-in-India Statistical Profile - 1988 (WI-SP-1988). Incidence of stagnation among girls is twice that among boys and girls constitute 65% of the illiterate children in the age group of 10-14.

Another area where there is a prejudice against female child is with regard to work. In most of rural India, young girls work for long hours at home or in the field, but their work is largely unrecognized and accorded low value. 55.4 million girls are stunted and thwarted by being over burdened with household work in addition to the 8.7 in wage employment. Our experience with street girl children has been similar. They are doubly burdened with outside work and housework. Almost all girls give their total earnings of the day to their parents (usually the mother) whereas boys only give part of their earnings. This is due to differential

market of morbid dimensions flourishing unchecked. It has also been alleged, meanwhile, that the trade in children and girls is thriving in the country. A year ago, a big storm was raised in the country when the recruitment of boys for camel-racing in the Gulf was exposed. These shameful acts of trading in children only speaks of the value a society has for its children where they are seen not only as expendable commodities, but as an exportable surplus as well.³

A good number of these child brides die at child birth and an equal number are pushed into prostitution.

The Devadasi and Jogin System (temple dancers) which are still practiced in some parts of India have institutionalized prostitution and accorded it religious sanctions. Hundreds of girls belonging to the poor disadvantaged communities are forced into becoming a Devadasi. So also daughters of Devadasis and Jogins.

In every count, girl children have a raw deal in life due to the low status of women in the country. It is time she is given her due to make her a more worthwhile contributor to society, but also because it is her right. Girl child has not only the right to survival but also the right to be free of malnutrition, disease and poverty. Unless the girl becomes a priority in health nutrition and education

3. Editorial, The Hindustan Times, New Delhi,
19th August 1991.

policies, the process of development in the country will remain unrealisable and rhetorical.

CHILD ABUSE

In India, we have not given much attention to the issues of child abuse because of a lack of sensitivity to the problem in our society. This lack of sensitivity is related to our social and cultural values regarding the position of a child and his/her rights in the family, community and society at large.

Due to this low priority, there is a dearth of data on the nature and magnitude of the problem resulting in not having a clear policy on child abuse and programme interventions for its prevention and management. Nevertheless, the available data does indicate that the main reasons behind child abuse are cultural, lack of education, unemployment, poverty, divorce, separation, unstable family, early marriage, oppression, childhood experiences, severe parental control etc.

The Indian Constitution does contain provisions for safeguarding the interests of children and protecting them against cruelty and exploitation. Article 39(F) of the Constitution enjoins the State that it shall in particular direct its policy to ensure that childhood and youth are protected against exploitation and against moral and material abandonment. Indian Penal Code too deplores child exploitation and considers exposing a child below 12 years to physical risk or deserting it with the intention of abandoning it by

parents or any personnel entrusted with the care of the child, kidnapping or maiming a child for begging, and selling or forcing a child into prostitution etc. as offence.

While there is no single legislation to deal exclusively with the problem of child abuse in India, there are various acts such as Juvenile Justice Act, 1986; Child Marriage Restraint Act, 1978 which deal with one aspect or the other of child exploitation and cruelty. ⁴

As stated earlier, there is so little information and knowledge on the subject that till today we have not been able to assess the magnitude of the problem. The first attempt to have a serious debate on the subject nationally was done in June 1988 when National Institute of Public Cooperation and Child Development organized a national Seminar on 'Child Abuse' in Delhi.

There is a great need to do research in this area, to collect enough of data to understand the extent and various forms of child abuse, if we are to formulate policy and programme interventions for the prevention and management of child abuse. Presently, some data are available on the condition of children in institutions, whereas there is practically no information available on child abuse within family setting

4. National Institute of Public Cooperation and Child Development : A Report - National Seminar on Child Abuse in India, Page 4, June 1988, Delhi.

Media has a very important role to play in the prevention of child abuse, particularly in creating mass awareness about the problem.

So the challenge in this sector is indeed a considerable one starting from putting together the data on the magnitude, dimensions and forms of child abuse to formulating policies and programmes, and initiating actions for preventing children from being exploited.

WORKING CHILD

The Scene:

In 1890

Jaffir Khan is fourteen yearsold and he had already completed four years of service as a "Doffer" in three different spinning mills at Bombay. He gets up at 4.30 a.m. at begins t work at 6 a.m. and leaves the mill at 7 p.m. Though the legislation say that a child cannot work for more than 6 hours a day, Jaffir Khan always worked for more than 12 hours a day. He used to generally be absent for one day in the month for which he is fined. Jaffir and his fellow working children have to work even on Sundays and festival holidays in cleanng the machineries and factory premises. Thus these working children kept themselves busy with filth and dirt even on holidays. The 'Muccadums' (supervisors) speak to these young workers only through the 'stick' that kept the working children under 'discipline'.

Jaffir Khan's story dates back to 1890 (case presented in Lethbridge (Report) Commission dated 12th November 1890), roughly a century ago.

1890s WITNESSED THOUSANDS OF JAFFIRS TOILING IN PLANTATIONS, FACTORIES, QUARRIES, MINES, ETC. NEARLY A CENTURY HAS GONE BY SINCE THEN. THE LIVES OF THOUSANDS OF JAFFIRS IN 1992 REMAINS VERY MUCH THE SAME.⁵

In.1988

"Bending through the low doorway, as we entered the tiny mud thatch hut, the boy looked up and grinned at us from behind the curtain of threads. The single dingy room is barely large enough for a human for a human being to live in and he shares it with two other boys. With little and no ventilation it was hot and airless on a summer afternoon. Here this twelve-year-old boy puts in a 12 hour day at the carpet loom.....

"The children often get lung diseases, their feet swell from hanging in the pit all day, working in bad light affects their eye sight and years of knotting carpets makes the joints of their fingers turn stiff and arthritic....In the first few years the boy earns nothing and only a pittance later. He thinks he's lucky if beyond two square meals a

5. Dingwaney M, Children of Darkness - A manua on Child Labour in India, Rural Labout Cell, New Delhi 1988, Page 1.

day he gets a little money. He's been working at the carpet looms since he was seven or eight and he's never been to schoolThe rebellious ones face beatings; like the children rescued from Bilwaria in Mirzapur district who were all scarred by lathi blows....⁶

Collecting accurate data on the number of working children in the world is difficult and estimates vary widely depending very much on the definition of work. Every estimate of child labour falls far short of the actual. There are such limitations as multiplicity of concepts, methods of estimation and the sources of data.

In India, there are three figures to go by. Government of India estimates it at 18 million whereas Operation & Research Group, Baroda at 44 million and Concern for Working Children (an NGO at Bangalore) at 100 million. If one were to go by the school attendance figures (between the ages of 5-14) and the number of children out of school (132.31 million), we could presume most of these children are put to work in the home or outside, unpaid or in wage labour. A large proportion of school going children, especially those from low income families, would have to work after school hours to supplement family income. India has probably more working children than any other country in the world. More than 80% of working children belong to the rural areas and work in the primary sector of the economy. According to the

6. Dingwaney M, Children of Darkness - A Manual on Child Labour in India, Rural Labour Cel, New Delhi 1988, Page 1.

1981 Census, about 86.4% of the child work-force is employed in agricultural and allied activities in rural sector.

Child labour is rampant in areas where there is highest adult unemployment and also in economically depressed areas where syndicates of employers and middlemen can manipulate hiring practices in an exploitative way, drawing from a virtually inexhaustible army of desperate poor children and adults.⁷

From time to time, various Acts have been passed by Government of India to safeguard the interests of working children.

Some of the important Acts are the Employment of Children Act, 1938; the Factories Act, 1948; the Plantation Labour Act, 1951; State Shops and Commercial Establishments Acts; Bidi & Cigar Workers (Conditions of Employment) Act, 1966 etc. Despite these, child labour continued in these occupation

The Gurupadaswamy Committee was constituted in 1979 to examine in detail the existig child labour laws and to come up with a single child labour legislation. The outcome was the Child Labour (Prohibition & Regulation) Act, 1986. It aims at prohibiting the engagement of children who have not completed the 14 years in certain hazardous employments and regulating their working conditions in certain other employments (See Annexure I and II for details).

7. Helmore Kristin, A Brutal Choice : Work or Starve, Children in Darkness, Christian Science Monitor, June, 1987.

Only time will tell how effectively the Act of 1986 can prohibit and regulate child labour in different industries and processes. If the implementing body is not strong enough, it would also meet the same fate as have our previous Acts.

TRADE UNIONS

Trade Unions else where in the world have been in the forefront to fight child labour but in India there is a different story tell. As Prof. Myron Weiner in his book, The Child and the State in India has this to say-quote, "Though some of Indias trade union leaders do speak out against child labour, the unions have not played any role in pressing state governments to enforce child labour laws.

Why have unions in India largely been indifferent to child labour ? One reason is that there are virtually no unions in the cottage industries and small shops and businesses that employ children. But even in the few industries that have both unions and child labour (e.g. plantations), union leaders have not pressed for the enforcement of child labour laws. In these industries union leaders and their members approve the practice widely pursued by employers of giving preferences in employment to the children of existing workers. Union leaders believe that if the children remain out of the labour force too long, plantation managers would hire others, and that "educated" children might not be fit for plantation work. They have, therefore, not pressed for raising the minimum age (twelve) for working on plantation nor for better working conditions and wages.

In short, trade union leaders, like most parents, employers, teachers, etc. presume a social order guided by the principles of social reproduction i.e. children can best assume the same roles as their parents by early entrance into the labour force" ⁸.

I also feel that since in India, political interest to social issues are directly linked to how crucial it is in electoral terms i.e., is the socio-economic issue pertinent to a section of Indian Population, who are any way split into Hindus - (High Caste, BackwardCaste, Scheduled Caste) tribals, landless labourers, small farmers, marginal farmers etc. religious minorities (,uslim, Sikh, Christian, Budhist etc.) and other ethnic groups ? If so, it becmes a bargaining point for a national political party to take up the issue and represent the group. Therefore, in the case of children as they are not voters, political parties having nothing at stake; so also trade unions which are arms of national political parties.

Most National Governments support the child labour system directly or indirectly. They argue it on the ground that "if child labour is eradicated, the poor will starve" or that "poverty cannot be eradicated in the short run and therefore child labour must be tolerated". However, evidences have failed in short-run controls as well as in long-run objectives of poverty eradication, both off which have supported and strengthened the system of child labour in the third world countries.

8. Myron Weiner, The child and the State in India, Oxford Univ. Press, Delhi, 1991, Chap. 8, Page.200-201.

Other factors that support the system in the third world countries are inadequate education systems and certain socio-cultural constraints of the poor. Studies have shown that developing economics frequently lack in the infrastructure for providing compulsory primary education to all children. Moreover, there are problems of quality, relevance and functional value of the education imparted. Therefore, in the eyes of the poor, the cost of education is high and returns low.

Child labour breeds generations of illiterate adults with poor physical conditions due to the years of hard labour during childhood. These adults would also barely be able to support their families and who will in all likelihood have to send their own children to work.

The existence of child labour, in whatever form and magnitude, should be a matter of concern to the parents, society and state.

STREET CHILDREN

By the turn of the century, more than a third of India's population is likely to live in the cities. Today, 217 million of the total population of 844 million (1991 Census) live in urban areas. There are 23 metropolitan cities which account for 71 million i.e. they are one-third of the urban population of India. Nearly one out of every three persons living in an urban area is below the poverty line. As of 1984-85, the urban poor numbered over 50 million - 68% of them women and children.

In a scenario so depressing, one could only imagine the status of poor marginalised children. They are the street children. They live and grow up on the margins of society - often without education, affection, care and guidance from adults. They are representatives of a mute and nameless magnitude. The street children live, work and sometimes die on the streets unnoticed. These children struggle to survive by fair or foul means in a hostile adult world which rejects them. These children of victims of poverty, who are forced to take up work as street workers in the unorganized sector, spend most of their time on streets. The abject poverty coupled with child neglect and abuse do keep children away from homes until slowly sever all ties from families. The destitute, abandoned children are the most vulnerable citizens of a city.

In India, there is no national data of the numbers of Street Children. The only data available so far are the seven cities situational analysis studies done by UNICEF and the Ministry of Welfare, Government of India.

Almost all the programmes are NGO Initiatives, though reaching small numbers. NGOs response to this issue has seen some successful innovative non institutional strategies. The need of the day is to have a national policy on street children so that there would be relevant non-institutional programme interventions developed, and also specific support to NGOs who are already involved in this work.

DESTITUTE CHILDREN

Within the broad categories of children which are covered by the title "Children in Especially Difficult Circumstances", the vulnerable groups relevant to our Indian contexts are abandoned, orphaned, destitute, working and street children.

It is estimated that there are about 150,000 children in over 1000 institutions in the country. At present, there are about 570 children institutions being run under the Juvenile Justice Act all over the country, looking after about 45,000 children.⁹

Although it has been proved beyond doubt that institutional care is not the ideal solution, yet we cannot rule out institutional care completely. What is required urgently is a review of all child care institutions to assess its quality of services and care. There is a great need to train the personnel managing the institutions in child psychology, counselling orientation programmes to change perceptions, and attitudes of the workers towards these children so that they are not treated as criminals and deviants who need to be disciplined and controlled through corporal punishments. Sexual abuse within these institutions are not uncommon.

Children in institutions are unfortunately alienated from the community where they live or rather housed. The children

9. Damania Deenaz, Non Institutional Services for the Destitute Child - A Report prepared for UNICEF, unpublished Page 2, April 1990.

should not be kept on the margin, but rather in the bosom of the community. It is about time community took the responsibility of looking after these children. The doors of the institutions should be kept open so that there is more interaction between the children and the community, it should be made accessible to any child to come and go, so also for the community (which must include children too) to participate in the caring of children in the institutions.

One of the progressive steps taken by the Government in the context of legal protection for destitute and delinquent children is that Juvenile Justice Act, 1986 replaced the old Children's Act of 1960. The main features of the Juvenile Justice Act is the distinction it makes between neglected and destitute children and Juvenile delinquents. These two categories of children are handled through different channels and through different child care institutions. While this Act was to be implemented by all Federal States of India, nothing substantial can be said on this score as of today.

CHILDREN OF PROSTITUTES & CHILD VICTIMS OF PROSTITUTION

According to a study conducted by the Tata Institute of Social Science, there are approximately 20 lakh prostitutes in India residing in 817 red light areas with more than 50 lakh children labelled as illegitimate.

Perpetuation of religious customs like Devadasis, Basavis, Jogins which in all purposes is institutionalized prostitution are witnesses to dedication of girl children to deities and

gooddeses. The children of Devadasis and Jogins are forced into rededicating themselves, thus perpetuating the system.

Poverty, illiteracy and lack of opportunities for employment lead young girls into prostitution for survival. Street girls are a group that fall easy victims to pimps and molesters. Some of these girls are as young as 12 years or even younger.

The issue of prostitution has been discussed mainly in terms of exploitation of women. But the worst affected by this situation are children born to prostitutes who are the victims of their circumstances from the moment they are born. These children are denied their rightful opportunity to break from the handicap they are born with. As a result, they are denied basic opportunities to growth and development.

The environment in which these children are forced to live makes for male children to interact with pimps, smugglers, drug peddlers, drug addicts and the gambler who become role models for them. Due to lack of education and employment or any kind of recreational activities, these male children receive training to play the necessary supportive roles in trade management like pimping and procuring besides acquiring proficiency in other anti-social activities.¹⁰

10. Patkar Prit pai, Children of Prostitutes : A perspective Social Welfare, Page 15, June 1990.

Birth of a girl child is most welcome in a brothel. She is seen as a source of security for her mother in old age and the source of income to the brothel keeper.

The closest role model for a girl is her mother. It is not often that girl children escape being drawn into the profession.

It is only very recently that we have been focussing on this serious issue. There needs to be further debates, discussions and researches to be done in this area so that we could come up with possible strategies to help the lot of these children. The Prevention of Immoral Traffic Act, 1987 needs to be thoroughly reviewed.

LEGISLATIONS

Here too I would like to quote from weiner's book, which puts it very clearly the "use value" of legislations. To quote, "Social legislation in India which is rarely enforced by the bureaucracy, serves still another purpose. Legislation involving child labour, compulsory education, untouchability, child marriage, dowrie and the like are statements of intentions, and the words used in the legislation are a kind of modern talisman intended to bring results by the magical power of the words themselves. The legislation demonstrates that one is committed to all that is modern and progressive, and if the laws are not enforced the fault lies not with the legislators or bureaucrats but with a society that is not responsive to the law's injunction".¹¹.

11. Myron Weiner, The Child and the State in India, Oxford Univ. Press, Delhi, 1991. Chapter 8, Page. 205.

Fortunately, the Government is not left alone in responding to the needs of the children. It is a well known and accepted fact that Non Governmental Organizations have been frequently pioneers in responding in innovative ways to social and developmental challenges and quite often with a high degree of commitment. Government has generously acknowledged this. What is now required is sincere actions on the part of the Government to honestly take the NGOs along as its active partners and allies in the cause of addressing the needs of the children. However, for this partnership to operate, what is required is not just the statement of Government's support to NGOs, but policy adjustments and appropriate mechanisms to provide the required resources to the NGOs so that energies and efforts are not diverted towards fund raising, but are entirely committed to field actions.

Concomitant to efforts in this direction, urgent steps are also required to be taken to ensure early ratification of the UN Conventions on the Rights of the Child. It is indeed difficult to understand India which is quite often considered more progressive country among the developing countries has till not ratified the Convention. Whereas several other countries that are low down in the scale of development have taken the initiative as a first step towards their commitment to children.

"In crisis after crisis, may it be political or economical, whether the cause be debt crisis and structural adjustment

programmes in developing countries or the shift in political ideologies or the outbreak of war/riots, it is the children whose lives are most devastated. Children who will bear the scars for longest and children who are paying the ultimate price with loss of opportunity to grow normally, be educated and acquire skills necessary to earn a decent/productive living." Politics is increasingly becoming a process by which you acquire "Power rather than purpose".¹²

Finally, it is about time we realized that granting children their Right is no more a subject of philanthropy and charity, but it is in no unclear terms Rights that are truly theirs. It should not be said by future generations that children were not given their Rights because they were not organized, not strong enough to demand it from a society which failed them in their primary duty towards the most vulnerable, voiceless and weakest members of the society.

(RITA PANICKER)

NEW DELHI

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12. UNICER, The State of the World's Children, 1992
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