

## **TOWARDS A RIGHTS-BASED APPROACH TO CHILD PROTECTION**

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### **Abstract**

*This article starts with the ecological framework of children in need of protection, according to which children are vulnerable due to the traditional factors of patriarchy and caste system and this vulnerability has increased due to the modern factors of development and liberalisation. All children are vulnerable to neglect in the adult-centred society, but girls, differently-abled and Dalit children, in poverty groups and in emergency situations are more vulnerable to neglect. All children are vulnerable to abuse, but children neglected due to parents' unavailability, unwillingness or incapacity are more vulnerable to abuse and exploitation. The child rights approach is based on the principles of state and social accountability, universality and non-discrimination, indivisibility and participation. It emphasises the life cycle, gender-sensitive, child-centred and advocacy approaches to protect child rights. The strategies for child protection are generally planned with a welfare orientation in spite of the Constitutional rights and even after India ratified the United Nations Convention on the Rights of the Child in 1992. A child rights-based policy and action plan and a multi-system approach are recommended towards a rights-based approach to child protection. The paper concludes with recommendations for knowledge development and dissemination, and training programmes to promote this approach.*

### **INTRODUCTION**

The Government of India has given priority to children's issues since the First Five Year Plan. It ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1992. The National Commission of Human Rights and several State Commissions of Human Rights are also focussing their attention on human rights of

children. The Bill on National Commission for Protection of Child Rights is in the process of being enacted. Increasing number of voluntary organisations are using the rights-based approach for intervening with various developmental and protection aspects of children. The United Nations organisations such as United Nations Children's Fund (UNICEF), International Labour Organisation (ILO), United Nations Development Fund for Women (UNIFEM), United Nations Development Programme (UNDP) and United Nations Drug Control Programme (UNDCP) and other international non-government organisations such as Save the Children Fund are playing key roles in India for promoting awareness and protection of children's rights. However, it is also a fact that although India has spent more resources on children than on any other group, children's issues have got aggravated and multiplied, and protection of child rights is still a distant reality. The major reason for this state of affairs is that children's problems are addressed by a needs-based child welfare approach. The need is for a rights-based child protection approach.

According to Save the Children (2002), the needs-based as well as the rights-based approaches are based on a desire to help children survive and develop to their full potential. They both seek to identify a range of assistance and actions that are needed to achieve this. One of the key differences between these two approaches is that a needs-based approach does not come with accountability. There is no moral or legal obligation on the state and/or other statutory bodies to protect or assist. Many rights have developed from needs, but a rights-based approach adds legal and moral obligations and accountability. Equally, in a rights-based approach, the holders of the rights are encouraged and empowered to claim their rights. This means that they are seen as not objects of charity (as they are in a needs-based approach) but rather those who are claiming their legal entitlements (Save the Children 2002).

This article on 'Rights-based Approach to Child Protection' starts with the ecological framework of children in need of protection. It then examines the child right to protection and reviews the strategies for child protection with reference to these rights. It concludes with the need for multi-system strategies for rights-based child protection.

*Towards a Rights-based Approach to Child Protection***ECOLOGICAL FRAMEWORK OF CHILDREN IN NEED OF PROTECTION****Review of the Definition according to the Juvenile Justice Act**

According to the Juvenile Justice (Care and Protection of Children) Act (JJA), 2000, children in need of care and protection include children who are found without any home or settled place of abode and without any ostensible means of subsistence; who reside with a person who has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out or has killed, abused or neglected some other child and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person; who are mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after; who have parents or guardians who are unfit or incapacitated to exercise control over the child; who do not have parents and no one willing to take care of or whose parents have abandoned them or who are missing and run away children and whose parents cannot be found after reasonable inquiry; who are being or are likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts; who are found vulnerable and are likely to be inducted into drug abuse or trafficking; who are being or are likely to be abused for unconscionable gains; and who are victims of any armed conflict, civil commotion or natural calamity.

Such listing of categories does not help us understand the causes of the situations in which the child is. The conceptual framework of children in need of protection is developed in this section within the ecological perspective, where problems are seen as deficits in the environment, as dysfunctional transactions between systems, rather than a disease located within the individual. Problems are not viewed as an attribute of children; these are viewed as an attribute of their social situation (Hartman and Laird 1983). An ecological understanding of childhood requires that the child's family context be analysed. The family, in turn, has to be understood in the context of its societal environment. The embeddedness of children's problems from micro to macro systems and linkages between these systems are understood. It also implies that intervening only with the children does not go very far in improving their situation.

All efforts are needed to perceive the whole child and provide an integrated intervention to every child.

### **Factors leading to Vulnerability in Childhood**

The traditional social structures of patriarchy and the caste system and the modern policies of liberalisation, privatisation and globalisation are the macro factors that have made childhood vulnerable to neglect, abuse and exploitation, by adults in families, schools, neighbourhood, institutions as well as the police, who are meant to be their caretakers, as discussed below.

Although childhood is neglected in the patriarchal families, children did grow up with family and community support. However, community is being made a casualty, families are becoming more vulnerable and patriarchy is getting aggravated in the process of first development, and now liberalisation. These processes have incorporated the subsistence communities into the market economy, increased consumerism among the rich and deprivations among the poor, and weakened the community support systems, thereby leading to further exploitation of the vulnerable children.

Large private entrepreneurs with automatic machines render a large number of workers jobless. There is major expansion of the unprotected, unorganised labour force. Unemployment among men, together with increased migration/desertion and alcoholism among men, has led to an increasing number of women and children joining the labour force. Women generally join the unorganised sector as it allows them to continue their child caring roles. Moreover, women are often not trained or experienced to work in the modern economy. Casual labour accounted for 34 per cent of the women in the labour force and 41 per cent of casual labourers were women in 1991 (World Bank 1991). This sector does not provide women with social or job security, unionisation, application of anti-discrimination laws and so on.

The development policies and approaches assume men as earners and heads of families. These policies exclude women from development programmes that provide a significant portion of development funds and human resources. Such gender-blind approaches erode the independent production capacity and economic autonomy

previously enjoyed by women. As a result, there is feminisation of poverty, leading to increased vulnerability of children. Development policies and programmes need to recognise and facilitate women's productive roles.

### **Stages and Linkages in Situations of Children in Need of Protection**

All children are vulnerable to neglect, abuse and exploitation, by virtue of being dependent on adults. The vulnerability is further aggravated in girls, differently-abled and Dalit children, in poverty groups and in emergency situations. All children are vulnerable to abuse, but the neglected children are more vulnerable to abuse. All children are vulnerable to commercial exploitation, but the neglected and abused children are more vulnerable to commercial exploitation. It is important to understand the differential situations in these stages and the linkages among them, as elaborated below.

#### ***Vulnerability in Children***

Patriarchy has been responsible for marginalisation and neglect of children, due to their vulnerability by age, in an adult-oriented system. Patriarchy has particularly made the girl child more vulnerable than the boy child.

Disability has made differently-abled children more vulnerable than others. Ableism is prejudice against the differently-abled or disabled and discrimination in favour of the able bodied. In all countries of the world, people with disabilities are starved of services and facilities available to the non-disabled and, consequently, are the least nourished, least healthy, least educated and least employed (Baquer and Sharma 1997).

Poverty-related characteristics include caste, class, regional characteristics and female-headedness. Families in rural backward areas are more vulnerable to poverty than others. Development and liberalisation has aggravated the gender, disability, caste and poverty related factors that make children vulnerable.

Displacement, environmental disasters, ethnic/armed conflict and refugee status create emergency situations that aggravate patriarchy, poverty and incapability of parents for childcare, that make children who are otherwise cared for, vulnerable to neglect,

abuse and exploitation. Their environment is affected by separation from their family and other support systems, homelessness and disruption of education and recreation.

The birth of a majority of the children in the poverty groups are not registered, leading to problems of age determination, entry into education and family identity. Children who do not go to school are potential victims of neglect, abuse and exploitation.

### ***Child Neglect***

Parents have the main responsibility for childcare. Children are neglected when parents are incapable, unwilling or unavailable to look after them. Orphans, children born out of wedlock, abandoned or surrendered, unwanted children, children with both or one of the parents dead, divorced, separated or deserted, and children of step-parents, or parents incapacitated due to disability, substance abuse, suffering from terminal illness such as Human Immuno Deficiency (HIV) and Acquired Immuno Deficiency Syndrome (AIDS), imprisonment, and other such problems, are neglected. These neglected children may continue to stay at home, are institutionalised or are on the street. Children staying at home without parents form child-headed households. Neglected children's needs for family life, housing, health, education and recreation are neglected. Moreover, they are vulnerable to physical and sexual abuse, conflict with law, and commercial exploitation for labour, sex and substance abuse (Desai 2001).

### ***Child Abuse***

Patriarchy has always justified physical abuse of children for disciplining purpose. Neglected children are vulnerable to abuse. Child abuse is any intentional non-accidental physical, emotional or sexual harm to a child; by older children, parents, relatives, caretakers, neighbours, teachers, employers, police or strangers; in family, school, neighbourhood, street or custody; that endangers or impairs a child's physical and/or mental, emotional and social health and development. Now there is growing visibility of the issue of domestic child sexual abuse across classes, by people, whom the child trusts, as a manifestation of adult power over children and commodification of females by males. Both, physical and sexual abuse, leads to emotional abuse, which is incurred also in the absence of physical or sexual abuse. Abuse within the

family is often the reason for children to run away and live on the street or get lured to trafficking.

### ***Commercial Exploitation of Children***

With development and liberalisation, caste and gender related poverty issues seem to have got aggravated, by increasing consumerism among the rich and poverty among the poor, through displacement of various kinds. In such situations, children from the poverty groups are commodified for labour, sexual exploitation, adoption and entertainment to meet the needs of their poor parents and for consumption of the rich adults. Neglected children are more vulnerable to such commercial exploitation. The known exploitation of children for labour, in the organised sector, has not shown any significant improvement and invisible child labour in the unorganised sector, such as those in domestic work, are coming to the fore. The nexus for gender and age specific trafficking of children for commercial exploitation for begging, labour, prostitution, adoption, entertainment, sale of organs and marriage is getting well-organised as a lucrative trade, through the stages of recruitment, movement through intra-country and inter-country transportation, and third party profit. Rehabilitation of the rescued children has become the most challenging issue for child protection due to the commercial nexus. Substance abuse among children is also exploitation of their vulnerability for profit making by the drug peddlers.

Globalisation has also led to expansion of the international organised crime, enlarging the scope for exploitation of children. Vitit Muntarbhorn (1994), the Special Rapporteur on Sale of Children, Child Prostitution and Child Pornography, stated in his report that poverty alone does not lead to commercial exploitation of children. It relates to the supply side of the problem. The global demand is explained by customers and the criminal networks which benefit from it and by collusion and corruption in many national settings.

### **Effects on Children**

Neglect, abuse and exploitation in childhood lead to problems with mental and physical health and development leading to loss of self-respect and dignity and loss of childhood. Their environment is affected by the separation from their family and other support systems, homelessness and disruption of education and recreation. Children,

in these situations, often do not survive, girls due to sexual abuse and exploitation, teenage pregnancy or infection of HIV/AIDS or other sexually transmitted diseases (STDs); and boys due to hard labour, physical abuse, substance abuse and/or conflict with law. The worst scenario is that the survivors are most likely to grow up to be abusers and exploiters themselves, in turn.

### **CHILD RIGHT TO PROTECTION**

Children have the right to be protected from vulnerability, neglect, abuse and exploitation, supported by the Indian Constitution and the United Nations Convention on Rights of the Child (UNCRC).

The Fundamental Rights provided by the Indian Constitution include the following rights, relevant to children:

1. **Right to Equality:** Prohibition of discrimination, Equality of opportunities in matters of public employment (This will not prevent the state from making special provisions for women, children, scheduled castes and scheduled tribes), Abolition of untouchability, and Abolition of titles.
2. **Right to Freedom:** Freedom of speech and expression, Peaceful assembly and form associations or unions, and Freedom to move freely in India, reside anywhere, hold or acquire property.
3. **Right against Exploitation:** Prohibition of traffic in human beings and forced and child labour

By way of the 93<sup>rd</sup> Constitution Amendment Bill, free and compulsory education to all children of the age of 6-14 years has been made a Fundamental Right.

The following are the Directive Principles of State Policy, in the Indian Constitution, relevant to children:

- Equality between men and women
- Protection of children and youth from neglect and abuse
- Organisation of village Panchayats
- Right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement. Provision of just and humane conditions for work and maternity relief
- Promotion of educational and economic interests of scheduled castes, scheduled tribes and other weaker sections

By way of the 93<sup>rd</sup> Constitution Amendment Bill, provision of early childhood care and education for all children until they complete the age of six years is made a Directive Principle of State Policy.

In spite of these constitutional provisions, the National Policy for Children of 1974, the National Plan of Action of 1992 and the National Charter of Children of 2003, children in India have been deprived of their fundamental rights of equality and freedom, and protection from discrimination, trafficking and labour.

In 1989, the United Nations General Assembly unanimously adopted the Convention on the Rights of the Child (UNCRC) that gives legal expression to the notion that children have independent human rights – and that those rights should be at the heart of all political, economic and social decision-making. The Government of India (GOI) ratified the UNCRC in 1992. UNICEF (2001) recommends programming for children with a rights-based approach in the following ways:

- *Draws from the guiding principles of human rights:* accountability, universality, indivisibility and participation to child rights;
- *Applies the UNCRC general principles:* non-discrimination, best interests of the child, child's right to life, survival and development, participation and protection; and
- *Uses child rights approaches:* life cycle approach, gender-sensitive approach, child-centred approach and advocacy approach.

Article 19 of the UNCRC deals with protection rights as follows:

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

Article 39 of the UNCRC states the following: States parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment, which fosters the health, self-respect and dignity of the child.

## **TOWARDS A RIGHTS-BASED APPROACH TO CHILD PROTECTION**

### **Review of Policies and Programmes for Child Protection**

The overall government strategies for child protection are planned with a welfare orientation in spite of the constitutional provisions and even after India ratified the UNCRC in 1992. There is absence of an understanding of the causes of the problems. There is a lack of understanding of the linkage between patriarchy, caste system and economic development with increasing vulnerability of children in the already adult-centred society. Data on the causes, magnitude, manifestations, and implications of vulnerability, neglect, abuse and commercial exploitation of children are inadequate. Census does not deal with data on children deprived of family life. Research studies are carried out in an ad hoc manner and are disseminated in long reports, which are not appropriate for users for policy and programme implementation. Assessment of the magnitude of the problems has been futile as the definitions and methods of assessment of the problems vary a great deal and findings are universalised instead of disaggregated by age, sex, caste and regional background. In the absence of an adequate database, interventions carried out are mostly on hypothetical and symptomatic basis.

There is absence of a child rights orientation and a sense of social accountability to protect child rights in the society, in general, and in the government and non-government functionaries, in particular. There is ineffective enforcement of existing legislation and inadequate legislation for prosecution of abusers, traffickers and employers of child labour. The government schemes lack a commitment to minimum standards. Moreover, monitoring, documentation and evaluation of the government and non-government programmes are weak. The child protection programmes have a welfare orientation that addresses only the manifestations of the problems and

fragmentation of children's issues. The GOI programmes for child protection in India are scattered across Ministries and Departments. Networking among NGOs is weak. Independent interventions by different systems with reference to the manifestations of the problems, lead to duplications and gaps.

### **Recommendations for a Child Protection Policy and Action Plan**

There is a need for a comprehensive Child Protection Policy, based on the principles of child rights, assured by the Indian Constitution and the UNCRC, to guide an action plan that addresses the multifaceted issues relating to child vulnerability, neglect, abuse and exploitation, with a multi-pronged approach. The following are the overall tasks recommended in this plan:

- Ensure that the ideological perspective of children's rights through adult responsibilities is integrated in all the policies, programmes and laws.
- Undertake a coordinated approach for prevention, rescue, care, treatment and rehabilitation and prosecution strategies.
- Create minimum standards for each strategy and resources to meet these standards and make monitoring, documentation and evaluation, integral parts of every programme.
- Set up think tanks for periodic review of the problems and programmes.
- Create a platform for public debate regarding ratifying UN Conventions that India has not.

### ***Prevention Strategies***

Child exploitation can be prevented by preventing child neglect and abuse, and child neglect and abuse can be prevented by preventing child vulnerability. Prevention of child vulnerability requires protection of children's right to life, survival and development, and participation in a non-discriminatory manner. Besides promoting non-discrimination and poverty alleviation, the specific prevention strategies are promoting birth registration; ensuring free, compulsory and quality education; ensuring supplementary childcare, family counselling and community support; and promoting advocacy and awareness about child rights to protection and adults' responsibility to ensure these rights. Several laws are enacted for promotion of social equity and poverty alleviation that have implications for child protection. However, these are not strictly enforced and violators not prosecuted. Central legislation is very often not enforced/ enacted/ implemented at the state and district levels, for want of resources. Resources need to be allocated for this purpose at state and district levels for child protection.

Non-Discrimination: Vulnerability of girls, differently-abled and Dalit children can be prevented by ensuring non-discrimination. The Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989, the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act of 1993 and the Pre-Conception and the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act of 1994, as amended up to 2004 and the Child Marriage Restraint Act of 1929, as amended in 1978 need to be strictly enforced. An Equal Opportunity and Prevention of Atrocities Against Girls/ Women Act is needed.

Poverty Alleviation: For prevention of child poverty, the Minimum Wages Act of 1948 for adults and the Bonded Labour (Abolition) Act of 1946 need to be strictly enforced. There is a need for the anti-poverty programmes of the Ministries of Urban and Rural Development, to ensure employment/livelihood of adults with minimum wages. Women's productive roles need to be recognised and facilitated especially in the single-parent families and female-headed households in poverty groups, such as families of widows or deserted women and those with migrant, disabled, unemployed, substance addict or imprisoned men, in order to prevent their children from destitution and exploitation.

Birth Registration: Birth registration is essential to protect the child's right to identity and legal personality, as well as other rights. For younger children, birth records are required for access to school and help safeguard against trafficking and abduction. For older children, proof of age is essential to ensure that they are not prematurely deprived of the protection that the law entitles them to, in areas such as marriage, sexual exploitation, work, recruitment into the armed forces and criminal justice (UNICEF 2004). India has enacted the Registration of Births and Deaths Act in 1969. However, there are significant differences between states, ranging from only two per cent of births being registered in Bihar to 95 per cent being registered in Goa (UNICEF undated).

Free, Compulsory and Quality Education: Children who do not go to school are potential victims of labour, life on the street, substance use, sexual abuse, trafficking,

commercial sexual exploitation and conflict with law. The Constitution (Ninety-Third) Amendment Bill, 2001 and the Right to Education Bill, 2005 aim at free and compulsory education for children from six to 14 years of age, and early childhood care and education for all children until they complete the age of six years. Sarva Shiksha Abhiyan aims at universalisation of elementary education with a holistic and convergent approach. However, free and compulsory education is not enough if there is no quality in the education provided. Moreover, there is a dire need to ban corporal punishment in schools.

Supplementary Childcare, Family Counselling and Community Support: Institutional care is costlier as well as harmful to the child's well-being as compared to the non-institutional family-based services. Moreover, the institutions are in bad state, exposing children to the same or more deprivation and abuse, and less freedom, than the outside life. The child can be best helped by treating the family as the central unit of services or focus of attention, whenever and as much as possible and in the community context. Supplementary care to the child in his/her own family through educational sponsorship, guidance, day care or night shelter can help prevent neglect and institutionalisation of children.

Promoting Advocacy and Awareness about Child Rights: The first need for advocacy for children in need of protection is breaking the silence around the issues of child abuse and commercial exploitation, which are very sensitive, hidden behind stigma, secrecy, shame or corruption. They are taboo subjects, particularly where they relate to sex or religion. This silence is a barrier to progress on child protection; it is impossible to mobilise action on something people do not accept (UNICEF 2004). Massive awareness campaigns need to be organised about child rights to non-discrimination and inclusion, development through health, education, recreation and democratic family life, participation and protection from neglect, abuse and exploitation. It is the responsibility of the state and society, and the systems within such as families, communities, schools, institutions, NGOs, police and so on to ensure these rights.

***Rescue, Care, Treatment and Rehabilitation Strategies***

The JJA is the major legislative system for care, protection, treatment and rehabilitation of neglected, abused and exploited children in India. The Department of Social Defence of the Ministry of Social Justice and Empowerment is the nodal agency for the juvenile justice system. It is governed by the JJA, 2000, which was enacted to replace the JJA of 1986. While the 1986 Act used the word juvenile throughout, the 2000 Act uses the term 'juvenile' for children in conflict with law and 'children' for those who need care and protection, reinforcing the connotation of the term 'juvenile' to mean 'delinquents'. Then the title of the Act uses the term 'juvenile'. The Act may have more appropriately used the word 'child' than 'juvenile'. The second part of the title is 'justice', whereas the Act really provides for welfare services rather than justice for prosecuting the wrongdoers.

The rescue of neglected, abused and exploited children is of no use if the rescued children are not given care, treatment and rehabilitation for a better life than before and are not protected from relapse of the problem.

Shelter: The JJA is heavily institutionalisation oriented as it plays a limited role of providing custodial care through Children's Homes, Shelter Homes, Observation Homes, Special Homes and After Care Homes. Clause 59 reinforces the closed prison orientation of these homes. It goes into details of when they can be given leave and for how many days and so on, applicable to the juveniles in conflict with law as well as children in need of care and protection. The protective custody approach of homes under the JJA should be replaced by open shelters especially for children in need of care and protection. Moreover, besides meeting the basic needs of housing and food, the shelters should assure protection of child rights to non-discrimination and inclusion, development through health, education and recreation, participation and protection from neglect, abuse and exploitation.

Medical Assessment and Treatment: The medical assessment of neglected, abused and exploited children comprises of taking comprehensive medical history, carrying out physical examination, collecting forensic evidence, getting the laboratory examination done and preparing an overall diagnosis, that guides the treatment as well as the prosecution. The potentially traumatic effects of the medical examination can be

decreased by obtaining the child's consent to the examination and by appointing a skilled and sensitive health professional (Doyle 1994).

Psycho-Social Assessment and Treatment: The psycho-social assessment of neglected, abused and exploited children comprises of interviewing and documenting the child's statement, documenting observations on the child's behaviour, interviewing the family members, and interviewing and documenting the abuser's/exploiter's statement. According to Faller (1993), trust and emotional, behavioural and cognitive reactions to abuse and exploitation appear to be the most important aspects for treatment of the abused/exploited child for his/ her protection from future victimisation.

Reintegration and Rehabilitation: Rehabilitation of the neglected, abused and exploited children can be achieved by facilitating their re-entry into schools, educational sponsorship and day care services or vocational guidance and training, depending upon their age. Rehabilitation of their families may be achieved through restoration of livelihood/employment for the adults in the family, joining self-help groups and counselling services for protection from relapse of the problem of the above children and their families.

### ***Prosecution Strategies***

The JJA does not provide for prosecution of the abusers/exploiters. Hence, apart from the serious sexual abuse cases, implying rape, other cases of physical and sexual abuse, even molestation, are let off with warnings and fine, depending upon the socio-economic conditions of the abuser and the abused.

Child Protection Act: A comprehensive UNCRC-based Child Protection Act and an enforcement system are needed to cover all children up to 18 years of age for effective prosecution and punishment of all forms of physical and sexual abuse of children in families, schools, institutions and police stations, and trafficking in person for all forms of exploitation, including adoption, labour and commercial sex. It may incorporate the relevant salient features of the Goa Children's Act of 2003, some of which are listed below:

- ‘Grave sexual assault’ covers all forms of sexual intercourse including oral sex and anal sex as well as offences such as making children pose for pornographic films, making children have sex with each other and deliberately causing injury to the sexual organs of a child. ‘Sexual assault’ includes showing children pornographic pictures and exhibitionism.
- Tourism related child sexual abuse is considered a non-bailable offence.
- It is the duty of all photo studios and developers of films to report to a police officer not below the rank of a Deputy Superintendent of Police in case they find that photos/films developed by them contain sexual/obscene depictions of children.
- Anyone who facilitates the abuse of a child by soliciting, publicising or making children available for their commercial exploitation should be viewed as engaging in unlawful activity. This includes hosting websites, taking suggestive or obscene photographs, soliciting customers, guiding tourists, or any other form, which may lead to the abuse of a child.
- The law authorises airport authorities, border police railway and traffic police to report any case of adults travelling with a child/children in suspicious circumstances or any suspected case of trafficking.

According to Desai et al. (2005), the proposed Child Protection Act may also cover the following:

- Non-discrimination against the girl, differently-abled and Dalit children.
- Parents’ marital status or poverty should in no way dilute child’s rights to parental care. Strict laws are needed for prevention of separation of children from parents/ mothers. There is an urgent need to ban the concept of ‘illegitimacy’ with reference to children in all our statutes.
- Facilitation of receiving child maintenance by mothers from their separated/ deserted/ divorced husbands as an overwhelming number of destitute children come from such families.
- A comprehensive gender-neutral law to deal with sexual abuse of children, covering the range of sexual offences, whether in the family, school, neighbourhood or work situation, or by the police, or care takers in institutions.
- Mandatory reporting of suspected/ alleged cases of abuse that the health and teaching professionals come across.
- Implementation of the Global Code of Ethics for Tourism, which prohibits sexual exploitation of children for purpose of sex tourism, to make it legally binding for the hotels, lodging/ boarding houses to prominently display at the reception counter anti-trafficking messages and penal provisions against sexual exploitation.
- Define degrees of violence against children.
- The abuser/ trafficker, the employer or any other exploiter should be required to make reparation to the child in the form of compensation, apology and assurances and guarantees of non-repetition of the wrongful act to the child victim.
- When public servants are found to be abusers or exploiters, their transfer is not adequate punishment; they should be dismissed, prosecuted, punished and fined.
- When a parent is the abuser, he/she should be removed from the home and not the child.
- Treatment and rehabilitation of abusers and exploiters of children, whenever possible, are an imperative for a child-friendly society.

- A comprehensive legislation to ensure adequate protection of refugee and asylum-seeking children, in the field of physical safety, health, education, and social welfare, and to facilitate family reunification.
- Media accountability and the role of adjudication agencies in terms of violation by media in publishing news on children.

Children's Courts: Desai et al. (2005) recommended fast-track Children's Courts, with the judge at the level of the District Judge, to try all offences against children, using the child-friendly prosecution procedure. In addition, child advocacy centres are proposed to be attached to it to facilitate the proceedings, through which, a panel of trained social workers would facilitate in helping the child in the matters of inquiry, witness examination, representing the child and so on. For the Children's Court, a cadre of child rights advocates and prosecutors needs to be developed. This system will help minimise the repeated trauma that abused and exploited children are subjected to in courts by way of lengthy and insensitive court procedures, which even adults find awesome and terrifying. The concept of jury may also be considered as the most appropriate disposition for such a court.

Advocacy centres may need to advocate and facilitate the following tasks for child rights-based legal action against the child abusers/ commercial exploiters:

- Train the forensic experts for child rights-based medical assessment.
- Obtain forensic evidence through medical assessment.
- Train the police and the judicial functionaries for child rights-based legal procedures.
- File a case ensuring arrest of the offender.
- Facilitate child-friendly legal procedures.
- Testify in the court.

### **Recommendation for a Multi-System Approach to Child Protection**

#### ***Nodal Department of Child Protection***

The implementation mechanism for the Child Protection Action Plan needs a nodal Department of Child Protection that would merge the following child protection programmes of the Ministry of Social Justice and Empowerment and Department of Women and Child Development:

Childline, Juvenile Justice System, Welfare of Street Children, Voluntary Children's Institutions, Adoption, Prevention of Alcoholism and Substance Abuse, and System for Combating Trafficking of Women and Children

Based on the understanding of the multi-faceted vulnerability of children to neglect, abuse and exploitation, a multi-system approach to rights-based child protection is imperative. The Child Protection Department must coordinate with the police system and the child labour projects and other related programmes of other Ministries and NGOs, in order to treat the child as a whole rather than fragment children's protection issues. This Department may be advised by an Advisory Committee comprising of the Secretaries of Social Justice and Empowerment, Home, Labour, Education, Health and Rural Development and Joint Secretaries of the Departments of Social Defence, Disabled Development, Scheduled Caste Development, Minorities and Backward Classes and Department of Women and Child Development. The Secretary of Social Justice and Empowerment may function as its Chairperson, who may also represent the Department in the Planning Commission. Sub-pans can then be developed for children in different situations. The mechanisms for intersectoral coordination and convergence need be worked out. Child protection should be the responsibility of not only the state but of every individual and collectively of the community. It may define the roles and responsibilities of different stakeholders across the departments, within the government and by the civil society and guidelines for them (adapted from Desai et al. 2005).

### ***Multi-System Approach to Rights-Based Child Protection***

Sometimes with intervention of more than one system, things get worse because children's lives continue to be controlled by others, and they experience system-induced traumas. These may be repeated, insensitive, and humiliating interviews; a frightening medical examination; a confrontation involving the perpetrator or the victim's family; an unpleasant placement experience; treatment that the child finds unhelpful or traumatic; and court testimony. Often the most problematic aspects of intervention are, not knowing what is going to happen and having no say in decisions. It is important that the intervention does not exacerbate the child's sense of powerlessness (Faller 1993). Such revictimisation of neglected, abused and exploited children needs to be prevented by a time-bound coordination among the implementation systems and training of the functionaries for a child-friendly approach.

Both the professionals and the child victims benefit from effective communication and collaboration across systems. Experience indicates that coordinated responses to child victim cases can facilitate the following:

- Reduce the number of interviews a child undergoes and duplication of procedures.
- Minimise the number of people involved in a case.
- Enhance the quality of evidence discovered for criminal prosecution or civil litigation.
- Provide information essential to family and child protection service agencies.
- Minimise the likelihood of conflicts among agencies with different philosophies and mandates (United States of America 1999).
- More efficient use of limited agency resources and time of all the systems.
- Prevent failure in rehabilitation leading to worse abuse and exploitation.
- Strengthen linkages across strategies of different systems, by developing protocols for work with each other.
- Share resources for more efficient use.
- Act as a pressure group with the government and other stakeholders.

Child protection needs a community approach, focusing on convergence of the following systems, in the rural as well as the urban areas. All the three types of systems (child care, child protection and support systems) may intervene for children in emergency situations. For more effective child protection, networks are needed within each type of systems at local and national levels, and across the three types of systems.

Preventive and Rehabilitative Family-based Childcare Systems: The following organisations work as preventive and rehabilitative systems for children:

- Organisations working for Sarva Shiksha Abhiyan and child sponsorship;
- Flexi-time daycare/ crèche for children of working and ailing mothers and after-school daycare;
- Hospitals/ health centres, child guidance/ counselling and family counselling centres; and
- Livelihood/ employment projects for adults.

Child Protection Systems: The following comprise the child protection systems that carry out the rescue, care, treatment, rehabilitation and prosecution programmes for child protection:

- Legal Systems: Juvenile Justice System, Police and the Judiciary/ Proposed Children's Courts;
- Programme-based Organisations: Childline, shelters, foster family care and adoption; and

- Issue-based Organisations: Organisations working with street children, child abuse, child trafficking, child labour, commercial sexual exploitation of children and child substance use.

Support Systems: Panchayati Raj Institutions, schools, youth groups, women's self-help groups and other citizens' groups, other voluntary organisations, hotel, transport and tourism industries, mass media and so on, should function as support systems for all the strategies of child protection.

## CONCLUSIONS

For the rights-based child protection policy and action plan to be effective, knowledge development and dissemination and training are fundamentally important as discussed below.

### **Recommendations for Knowledge Development and Dissemination System**

In all the areas of child protection, the major hitch faced by the government and NGOs is lack of adequate knowledge and its dissemination on the causes, magnitude, manifestations, and implications of vulnerability, neglect, abuse and commercial exploitation of children. Census does not deal with data on children deprived of family life. Research studies are carried out in an ad hoc manner and are disseminated in long reports, which are not appropriate for users for policy and programme implementation. Assessment of the magnitude of the problems has been futile as the definitions and methods of assessment of the problems vary a great deal. Moreover, children are perceived as an undifferentiated category. Disaggregated data for children by age and sex are necessary for planning differential strategies for their protection. In the absence of an adequate knowledge base, interventions carried out are mostly on hypothetical and symptomatic basis. There is a need for development of a data management and research system for children in need of protection, at the national as well as the state levels, in partnership with NGOs and academic institutions.

### **Recommendations for Training Programmes**

Well-developed policies and programmes are not effective because of lack of sensitivity among the implementing functionaries. All the government and non-government functionaries dealing with children need to be trained in child rights principles and strategies. In order to do so, curriculum planning, training manuals and training programmes need to be planned and conducted at the following three levels:

1. Curriculum on 'Principles and Strategies for Child Rights' should be mainstreamed in the regular education programmes of the public commissions, police, lawyers, social workers, home science professionals and teachers. In-service training may be planned for the above groups as well as for the following groups belonging to the state and the civil society: judicial officers, elected representatives, Panchayat and Nagar Palika members/ ward committees, staff of municipal corporations, NGO executives and frontline workers, hospitals, and Primary Health Centres, citizens' groups, senior citizens' groups, women's groups, youth groups, NSS volunteers, and members of Lions/ Rotary Clubs. The mode of the in-service training programme may be planned during the day/ evening/ weekend or through correspondence according to the requirements and convenience of the group concerned.
2. A cadre of paraprofessional child rights-based workers may be developed by a training programme that can be required of all the Probation Officers of the Juvenile Justice System and the staff employed in the child-related schemes.
3. A cadre of child rights-based development workers may be developed through the social work and home science institutions for higher education. This cadre may carry out demonstration projects, monitoring and evaluation, training, research, networking and policy and programme planning for child rights-based work.

Training of master trainers and capacity of the training institutes such as NIPCCD (National Institute of Public Cooperation and Child Development), NISD (National Institute of Social Defence) and Bureau of Police Research, Training and Development, should be enhanced for the same.

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