

In defence of the child in India

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Dr Sham Sunder Ads is President of the Committee for Legal Aid to the Poor (CLAP). In July 1998 CLAP initiated the Foundation-supported 'In defence of the child' project. The overall aim of the project is to ensure that the legal process and system are responsive to children's needs; and one important goal is to sensitise and educate key players involved in implementing child-related laws and policies. This article discusses a fundamental piece of work carried out by CLAP: a study of how well India's Constitution and child-related laws support children in securing their rights and entitlements, as set out in the Convention of the Rights of the Child (CRC). It also shows how this work identified areas of Indian law that needed attention; and shows how CLAP itself provided legal support to help bring about necessary changes.

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I wish you could realise that the destiny of our beloved land lies not in us, the parents, but in our children

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This message from the Father of the Indian Nation, Mahatma Gandhi, the apostle of non-violence, inspired our project 'In defence of the child'. The project focuses on children's rights, reinforcing their entitlements, and highlighting what is lacking. We organise campaigns to disseminate information about policies and legal

provisions relating to childcare and development, and to raise public awareness on the importance of civil registration. We also conduct grassroots-level surveys of children living under difficult circumstances, using the findings as tools in our advocacy work. Finally, we provide legal aid for cases that are of public interest.

Our goals are:

- to sensitise NGOs, the media, law enforcement instruments and policy makers on children's rights and, particularly, on primary education as a fundamental right;
- to make civil registration less complex;
- to ensure that laws that violate children's rights are amended;
- to prepare a Draft Uniform Child Code for consideration by the government;
- to make local authorities, children,

parents and civil society aware of the local government's role in the administration of childcare services and development;

- to take appropriate steps regarding the situation of children living in the most difficult circumstances; and
- to establish legal precedents through test cases in the courts.

One important element in our work has been to find out about provisions for children in the Constitution of India, and to examine the extent to which they

comply with the United Nations' Convention on the Rights of the Child. A Task Force consisting of jurists and advocates, undertook to collect acts, rules and regulations relevant for infants and children. These were set up in a matrix that related each to the relevant element in the CRC, and notes were added for future study and guidance. This helped greatly in demystifying the legal provisions for non-experts. To add to the body of information included in the matrix, we also conducted surveys in seven communities about the kinds of legal action that can be taken for infants and children. All of the outcomes of our work have been translated into the language of the region that we work in so that it is easily accessible to everyone.

Indian laws and the CRC

We cannot include a discussion of all of our work in this short article. Instead, we have focused on some of the most basic principles of the CRC, including: ensuring that terms such as 'child' and 'children' are properly defined; that each child has citizenship; that laws against exploitation are in place; that education is guaranteed; and so on.

What is a 'child'

CRC: The definition of 'child' is every human being below the age of 18 years, unless under the law applicable to the child, majority is attained earlier.

India: Many different terms and definitions are used in one or other of Indian laws. These include: 'minor and major', 'infant' (0-8), 'children' (up to 14, in most cases), 'juveniles' (all minors: boys up to 16; girls up to 18), 'adolescent' (14-18) and 'youths' (includes adolescent and beyond for certain purposes). One specific mention of child is about those under 14 not being allowed to work in factories, mines or any other hazardous employment. This fulfils the provisions of CRC in respect of 'minimum age or minimum ages for admission to employment'; and it is in line with an attempted uniformity in Indian law that aims to prohibit child labour.

CRC: It is recommended to establish a minimum age below which children shall be presumed not to have the capacity to infringe the Penal Law.

India: The Indian Penal Code has established this minimum age at seven or below. This is known as the age of

innocence. The time between eight and twelve years is known as the age of immaturity of understanding.

'Child' versus 'children'

CRC: There is an emphasis on the child as a member of a group, organisation or community. 'Child' in the singular sense is more appropriate to ensure the right against exploitation. In several Articles, the term child is the focus of concern and is recommended to be so. In recommendations about reducing early deaths, the Convention also recommends using the terms 'infant mortality' (children under one year); and 'child mortality' (children aged two to five). The plural use of the term – children – is used in a few cases. These include the following:

- improving the living conditions of the children.
- Combating illicit transfer and non-return of children abroad.
- Ensuring the development of institutions, facilities and services for the care of the children.
- Exchanging appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children.

- Ensuring that all segments of society, in particular the parents and children are informed and have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast feeding, hygiene and environmental sanitation and the prevention of accidents.
- Taking all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
- Preventing use of children in the illicit production and trafficking of drugs and psycho-tropic substances. Similarly, protecting children from the illicit use of narcotic drug and psycho-tropic substances.
- Developing measures to prevent exploitative use of children in prostitution and other unlawful practices.
- Developing measures to prevent exploitative use of children in pornographic performances and materials.
- Preventing the adoption of, sale of or traffic in children for any purpose or in any form.

India: from *Care of children in disadvantaged conditions*;
a research project by Alagappa University



- Developing measures for dealing with children without resorting to judicial proceedings, and so on.

India: In Indian law we found that, in general, the word 'children' implies that they have to be organised in groups, associations or communities or in some other way. The word 'child' appears but it is not clear that any distinctions are drawn between the two terms. In this it differs from the CRC. The principles of State policy towards children, as depicted in the Constitution, include the following.

- Positive discrimination in favour of children.
- Withdrawal/non-engagement of children in factories or mines, including hazardous occupations and processes or any other hazardous employment.
- Every child is a citizen and has the right to adequate means of livelihood without gender discrimination.
- Equal pay for equal work for children above 14 years, irrespective of gender.
- Children must not be forced by economic necessity to enter a vocation unsuited to their age, strength or state of health.
- Children should be able to develop healthily and in conditions of freedom and dignity.

- Free and compulsory education should be available to all children from birth to 14 years inclusive.
- Legal Aid should be available to children.

Birth and death

CRC: In Article Seven, the CRC declares that ‘a child shall be registered immediately after birth’.

India: There are four different systems for registration of child birth: for children below 21 days; below one month but older than 21 days; above one month but below one year; and above one year. A large number of children end up not registered at all. The state of the world’s children 2000 published by UNICEF, specifically mentions the importance of registration of birth for India, because India was one of those countries with fewer than 50 percent registration. UNICEF also pointed out that non-registration may increase the likelihood of children being denied access to basic services and miss out in health care and education.

Obtaining a name

CRC: Article Seven of the CRC also declares that a child ‘shall have the right from birth to a name’.

India: Indian law permits as much as 14 years to register a child’s name. In addition, traditions, customs and norms of some peoples – for example, the Bondas – mean that their children are not given a name until a certain time has elapsed after birth. Laws appear to be flexible enough to accommodate this.

Obtaining nationality/citizenship

CRC: In Article Seven, the CRC declares that a child ‘shall have the right to acquire a nationality’.

India: The questions that we had to answer were about whether children legally have nationality in India; whether their citizenship can be established easily; and what documents they ought to have as evidence. Indian laws give citizenship to the children of Indian citizens. However, given the difficulties in registering births, the non-registration of births, and the long delays that can occur in registering names, the picture is not very satisfactory. Even when the birth of a child is registered, the Birth Registration form does not clearly state the child’s nationality – and does not therefore provide evidence to show that the child is empowered as a citizen of India. CLAP is insisting that there must be some

kind of document to testify that, after a live birth, a child is a national of India, and is accepted as a citizen. While this is a matter of right, it is also of great practical importance in childhood and throughout life: some aspects of Indian laws apply only to citizens and only proper documentation will ensure that children can enjoy all their rights and privileges.

Education

CRC: Article 28 says that, ‘States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular, make primary education compulsory and available free to all’.

India: In Article 45 of the Constitution, there is provision for free and compulsory education for all children until they reach the age of 14. Birth Registration forms show the education of mother and father. When a mother and father are illiterate, their children are identified as ‘First Generation Learners’ – that is, the first generation in their families to receive education. More than 50 percent of Indian citizens have not attended the basic level of education promised by the State; and

we have found that, using the UNESCO definition, more than 90 percent of parents are functional illiterates. The children of such parents will not be able to get appropriate support for their education from their parents. In addition, a close analysis of early education shows that there are at least two streams. Those who are affluent and powerful are now opting for English-medium pre-primary education, nursery schools or Montessori schools for their children; poor people are resorting to the government-promoted lower primary school, where the medium used is Oriya. The division is very clear, as are its consequences.

Institutions, services and facilities

CRC: Articles 3 and 18, indicate that necessary institutions, services and facilities have to be ensured for children.

India: CLAP prepared a monograph showing the role of institutions in providing services and facilities, as set out in various Indian laws. This defined areas for action to ensure effective implementation of child related plans and programmes. Following on from this, CLAP provided legal support to

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Nalini, a girl and Goutam, a boy obtained their registration certificates with CLAP’s intervention – but only after 67 days and 65 days respectively. Does this constitute ‘registration immediately after birth?’ This is apparently legal but CLAP is pursuing this matter to ensure that the provisions of CRC are reasonably honoured.

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bring about change in the following:

- a) Ensuring the registration of live births.
- b) Ensuring provision for the maintenance and custody of children.
- c) Bringing public interest group actions on behalf of children in similar situations. For instance, children approached CLAP to help their families resist eviction from government land, because this would greatly harm their education. CLAP was successful in having the evictions reviewed, thereby taking effective action in an area that is not normally linked directly to child rights.
- d) Banning illegal advertisements for baby foods.
- e) Establishing coordinated campaigning networks. For example, the Orissa Forum for Crèche, and Child Care Services (FORCES) was formed in collaboration with National FORCES. Together, we are conducting the ‘Child First’ campaign on education and awareness building.
- f) Coordinating action to ensure that disasters are responded to in line

with legal requirements. For example, the Disaster Response Services and Advocacy Cell was formed in the wake of the Super Cyclone in Orissa, to ensure that the Orissa Relief Code was adhered to and functioned as it should.

For the future

Following the adoption of the CRC in 1989, the World Summit for Children, held in New York, established 27 Survival and Development goals for children to be realised by the year 2000. India is a signatory to these goals and – as required – approved a National Plan of Action for Children in line with them. The 27 Goals are as follows.

1. Reduction of infant and under-five child mortality rates by one third, or to 50 and 70 per 1,000 live births, respectively, whichever is less.
2. Reduction of maternal mortality by half.
3. Reduction of severe and moderate malnutrition among under five children by half or 1990 levels.

4. Universal access to safe drinking water.
5. Universal access to sanitary means of the disposal of excreta.
6. Universal access to basic education and achievement of primary education by at least 80 percent of primary school age children through formal schooling or non – formal education of comparable learning standard, with the emphasis on reducing the current disparities between boys and girls.
7. Reduction of the adult illiteracy rate (the appropriate age group to be determined by each country) to at least half its 1990 level, with emphasis on female literacy.
8. Provide improvement in the protection of children in especially difficult circumstances, and tackle the root causes leading to such situations.
9. Special attention to the health and nutrition of the female child and to pregnant and lactating women.
10. Access by all couples to information and services to prevent pregnancies that are too early, too closely spaced, too late or too many.

11. Access by all pregnant women to prenatal care, trained attendants during childbirth and referral facilities for high risk pregnancies and obstetric emergencies.
12. Reduction of the rate of low birth weight (less than 2.5 kilograms) to less than 10 percent.
13. Reduction of iron deficiency anaemia in women by one third of 1990 levels.
14. Virtual elimination of iodine deficiency disorders.
15. Virtual elimination of Vitamin A deficiency and its consequences, including blindness.
16. Empowerment of all women to exclusively breast feed their children for four to six months and to continue breast feeding with complementary food for up to two years of age or beyond.
17. Growth promotion and its regular monitoring to be institutionalised in all countries by the end of the nineties.
18. Dissemination of knowledge and supporting services to increase food production and ensure household food security.

India: *Personal hygiene*
from a photo story by
Gandhigram Rural Institute
Tamil Child-to-Child project

19. Global eradication of poliomyelitis by the year 2000.
20. Elimination of neonatal tetanus.
21. Reduction by 95 percent in measles deaths and reduction by 90 percent in measles cases compared to pre-immunisation levels by 1995 as a major step to the global eradication of measles.
22. Maintenance of high level of immunisation coverage (at least 90 percent of children under one year of age) against diphtheria, pertussis, tetanus, measles, poliomyelitis, tuberculosis and against tetanus for women of childbearing age.
23. Reduction by 50 percent in the deaths due to diarrhoea in children under the age of five years, and 25 percent reduction in the diarrhoea incidence rate.
24. Reduction by one third in the deaths due to acute respiratory infections in children under five years.
25. Elimination of guinea worm disease (dracunculiasis).
26. Expansion of early childhood development activities, including appropriate low – cost family and community-based interventions.
27. Increased acquisition by individuals and families of the knowledge, skills and values required for better living, made available through all educational channels, including the mass media, other forms of modern and traditional communications and social action, with effectiveness measured in terms of behavioural change.

Ten years on, these goals, and the Government of India's National Plan of Action for Children, provide a reference against which to measure what has been achieved in terms of policy and its implementation, how well it has been achieved, and what remains to be done. India is far from alone in failing to conform with all of the provisions of CRC. But progress is being made and we have found that there are many ways to influence – and help improve – policies and laws for children because the CRC exists. ○

