

FORCES' Recommendations Towards Women's Health Policies

Paper prepared for the
National Consultation Towards Comprehensive women's health policy and programmes.
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Forum for Crèche and Childcare Services is a child rights advocacy network that espouses the needs, wants and rights of the very young child. A loose and informal network of 49 organizations and 5 regional networks, its main focus is on the rights of women and children vis a vis child care especially in the unorganized sector.

Although we believe that all children's issues are of great concern to women and therefore impact their well-being, the following policy and advocacy issues identified by us in recent years have a direct bearing on the physical health of women.

DANGERS OF THE TWO CHILD NORM

The implications to women and children inherent in this proposed **National Population Policy and the 79th Amendment Bill** restraining people with more than two children from standing for election should not need much explanation to the participants of this consultation.

In the last few years the Health Ministry has been keenly propagating the **Two-Child Norm** through the media, along with directives for all government employees to adhere to such a norm. Simultaneously, there have also been moves to restrict Maternity Benefits to the first two children only.

Clearly changes are being proposed in law and policy through the back door in a way that is in clear contradiction to policies ratified in various international and national fora, advocating a 'target free' approach to Family Welfare.

[A few news items are worthy of note here:]

1. In November 1997, a High Court ruling upheld the provisions of the **Haryana Panchayati Raj Act** "which bars any person from holding the office of a Panch or Sarpanch if he/she has more than two children."

The court ruled "Right to election and Personal Law and is not a fundamental right", and it can be restricted for economic and social justice.

2. On 22nd April 1998, the **Delhi Small Family Act**, which bars people with more than two children from contesting MCD elections in the entire National Capital Region, was notified.

3. From **Andhra Pradesh**, another news item has come to our attention, according to which the Tribal mandal parishad chief was disqualified for breach of two-child norm.

Chennaraopet Mandal Praja Parishad President Dharawat Ammi, who is a tribal, was disqualified by the Chief Executive Officer of the Warangal Zilla Parishad for giving delivering to a third child in October '97. Aggrieved by the CEO's order, she approached the state High Court with the plea that being a tribal, she was unaware of the two-child norm set for the office holders of PRIs. The Court directed the authorities to allow her to continue in the post, pending disposal of her petition.

4. Rajasthan also has a similar notification.

The FORCES network feels that a coercive enforcement of the two-child norm through policy and law:

- Victimizes those who are already victims of widespread gender bias, namely the majority of women.
- It victimizes the third child directly by refusing access to maternity benefit schemes and indirectly by preventing the larger family from 'progressing'.

Sex Ratios	
Haryana	874
Rajasthan	913
Andhra Pradesh	973
Delhi	830

Source: Statistics on Children in India Pocket Book 1997, NIPCCD

- It promotes female foeticide, Infanticide and adverse female sex ratios.
- It encourages illegal abortions and delayed abortions affecting women's mortality and morbidity.
- It goes against all concepts of human rights, including women's reproductive rights.

- It is contrary to the policy of reservation for the empowerment of weaker sections.
- It is anti people (especially the poor) and anti democracy.
- It is unnecessary as a measure of population stabilization, and only serves to detract from the more serious business of providing adequate services in an atmosphere of greater awareness, information and choice.

We Recommend:

1. That a National Population Policy be formulated only after open and widespread debate with attention to the comments and criticisms already communicated by various concerned groups and agencies.
2. That the highest priority be placed on education, health care, food and employment for women and all programs and policies of the state respect their social, reproductive and economic rights.
3. That the new population policy adheres to the commitments made at Alma Ata, CEDAW and the Convention on the Rights of the Child, firmly steering clear of all coercive measures and disincentives.
4. That the following concerns be addressed:
 - Increasing privatization of health care and the rise in prices of life-saving drugs.
 - Increasing maternal deaths in abortion related cases.
 - Increasing issues of food security, malnutrition, feminization of poverty.

- Growing illegal use of women for contraceptive research.
 - Increasing emphasis on Reproductive Health without integrated strategies to tackle social issues of male legal responsibility, sexual violence, issues of values in adolescent reproductive health education, and commodification of women.
 - Increasing prostitution of children especially the girl child.
5. That this clear-cut policy, once accepted, should form the broad guideline for all related new laws and policies to avoid contradictions.
 6. That existing laws and policies be re-evaluated in the context of this new policy to avoid contradictions.

All national policies that affect women and children especially those on food, health, education need to be integrated. There is also urgent need for reliable data on women's health and causes for death.

MATERNITY BENEFITS FOR ALL WOMEN

The multiple roles of women as workers, inside and outside of the home and as child bearers and caregivers have always been inadequately supported.

Moreover, these last decades of economic restructuring have immensely added to these pressures. Women have been pushed from the organized to the unorganized sector where it is impossible to access even the few maternity benefits that exist. Whole families are forced to migrate to cities, which results in the loss of traditional support systems. Existing maternity benefits, are woefully inadequate, and are seen more as handouts rather than rights.

It is our recommendation that maternity benefits should be made available to all women regardless of employment status.

Benefits and supports must include the following:

- Wage protection for visible and invisible women workers, including adopting mothers, for at least six months
- Paternity leave for men.
- Acceptance of the need for flexible working hours to accommodate parental roles. This also includes the provision for crèches at work places irrespective of gender and numbers of employees.

CHILD CARE NEEDS OF WORKING WOMEN

The needs and rights of women and children converge at the time of maternity and remain intertwined for the entire period of child rearing, with special intensity during the early childhood years. These are also the years of greatest vulnerability and development for the child and future adult.

Child care as an issue has thus been seen to be critical to both women and children, especially in terms of need of support to working women in the prevalent patriarchal demarcation of

roles. Much of this responsibility is shared by older, usually girl, children to the detriment of their own development.

We Recommend:

1. Childcare support must be included in the Minimum Needs Program as it is a basic need of families living on or below the poverty line. Childcare support has implications for:

- Improved maternal and child health
- Reduction in infant mortality
- Improved adult, in particular women's productivity
- Greater participation of women in politics
- Greater educational opportunities for the girl child, and
- Greater school readiness among younger children.

Allocations for such support must not be reallocated or diverted.

2. Programs developed to address the needs of children under 6 years of age must focus on:

- Maternity provisions
- Requirements of the under twos
- The needs of children 2-6 years of age

3. Decentralization of the management of childcare services to ensure more community involvement, flexibility and better use of resources.

4. Removal of restrictions from schemes to bring in flexibility so that programs respond to local needs.

5. Recognizing the childcare worker as a person performing an important human resource function, to be paid adequately and provided adequate skills and training.

6. Allow multiple sources of funding for childcare programs and community contributions.

7. Childcare support to become part of anti-poverty programs and women workers to be paid for providing childcare support as part of employment guarantee.

8. Comprehensive legislation based on National Child Care and Maternity Code and a National Child Care Fund. With contributions from the State, Employers and Community, from which support for mothers and children can be drawn.

9. Allocation of 1% of GDP to day care services

We hope that any policy formulations relating to women's health would take these recommendations into account.

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8th February, 1999

STATEMENT OF RECOMMENDATIONS TO THE NATIONAL POPULATION POLICY, DERIVED FROM FORCE WORKSHOP UPON THE SAME ON 24TH NOVEMBER 1997 IN NEW DELHI

THE SIGNATORIES RECOMMEND

1. THAT THE NATIONAL POPULATION POLICY BE FORMULATED ONLY AFTER OPEN AND WIDESPREAD DEBATE WITH ATTENTION TO THE COMMENTS AND CRITICISMS ALREADY COMMUNICATED BY VARIOUS CONCERNED GROUPS AND AGENCIES.
2. THAT THE HIGHEST PRIORITY BE PLACED ON EDUCATION, HEALTH CARE, FOOD AND EMPLOYMENT OF WOMEN AND ALL PROGRAMMES AND POLICIES OF THE STATE RESPECT THEIR SOCIAL, REPRODUCTIVE AND ECONOMIC RIGHTS.
3. THAT THE NEW POPULATION POLICY ADHERE TO THE COMMITMENT MADE AT ALMA ATA, CEDAW AND CONVENTION ON THE RIGHTS OF THE CHILD, FIRMLY STEERING CLEAR OF ALL COERCIVE MEASURES AND DISINCENTIVES.
4. COERCIVE ENFORCEMENT OF THE TWO-CHILD NORM THROUGH POLICY AND LAW:
 - Victimises those who are already victims of widespread gender bias, namely the majority of women.
 - Victimises the third child directly by refusing access to maternity benefit schemes and indirectly by preventing the larger family from 'progressing'.
 - Promotes female foeticide, infanticide and adverse female sex ratios.
 - Promotes illegal abortions and delayed abortions affecting women's mortality and morbidity.
 - Goes against all concepts of human rights. (Including women's reproductive rights)
 - Is contrary to the policy of reservation for the empowerment of weaker sections.
 - Is anti people (especially the poor) and anti democracy.
 - Is simply unnecessary as a measure of population stabilisation, and only serves to detract from the more serious business of providing adequate services in an atmosphere of greater awareness, information and choice.
5. THAT THE FOLLOWING CONCERNS BE ADDRESSED:
 - Increasing privatisation of health care and the rise in prices of life-saving drugs.
 - Increasing maternal deaths in abortion related cases.

- Increasing issues of food security, malnutrition, feminisation of poverty.
- Increasing and illegal use of women for contraceptive research.
- Increasing emphasis on Reproductive Health without intergrated strategies to tackle social issues of male legal responsibility, sexual violence, issues of values in adolescent reproductive health education, and commodification of women.
- Increasing prostitution of children especially the girl child

6. THAT THIS CLEAR CUT POLICY, ONCE ACCEPTED, SHOULD FORM THE BROAD GUIDELINE FOR ALL RELATED NEW LAWS AND POLICIES TO AVOID CONTRADICTIONS.

7. THAT EXISTING LAWS AND POLICIES BE REVALUATED IN THE CONTEXT OF THIS NEW POLICY TO AVOID CONTRADICTIONS.

All national policies that affect women and children especially those on food, health, education need to be integrated. There is also urgent need for reliable data on women's health and causes for death.

**LIST OF PEOPLE WHO SIGNED THE RECOMMENDATIONS TO THE
NATIONAL POPULATION POLICY DERIVED FROM THE FORCES
WORKSHOP UPON THE SAME ON 24.11.97**

1. MS AMARJEET KAUR, AITUC
2. MS ASHA SINGH, DEPTT OF CHILD DEVELOPMENT, LADY IRWIN COLLEGE
3. MS BRINDA SINGH, FORCES
4. MS DEVIKA SINGH, FORCES
5. DR MIRA SHIVA, VHAI
6. DR MOHAN RAO, CENTRE FOR SOCIAL MEDICINE AND COMMUNITY HEALTH,
JNU
7. DR PADMA SETH, , NATIONAL COMMISSION FOR WOMEN
8. DR PUNEET BEDI, GYNAECOLOGIST
9. MS HEMLATA, SAKSHI
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11. MS JAYA SRIVASTAVA, ANKUR
12. DR KIRAN ARORA, JWP
13. MS MANJU JUGRAN, SEWA BHARAT
14. MS MOHINI PRAKASH, MOBILE CRECHES, DELHI
15. MS MRINALINI KOCHCHAR, MOBILE CRECHES, MUMBAI
16. MS RAMI CHHABRA, POPULATION FOUNDATION
17. MS SUNISHA AHUJA, MOBILE CRECHES, DELHI
18. DR VEENA MAJUMDAR, CWDS
19. MSVIDYABEN SHAH, CSWB

FORCES

BROAD RECOMMENDATIONS TOWARDS 10TH PLAN

Planning Commission Steering Group Meeting 17th April 2001

Recommendations for a policy framework and legal and administrative measures required in the 10th plan (Maternity and Early Childhood).

1. Ninth Plan recommendations regarding importance of Crèches and Daycare to be implemented.
2. Childcare to be included in the list of Seven Basic Services to be provided for human and social development.
3. Specific mention needs to be made regarding Crèches and Daycare as an essential strategy for women's empowerment, child survival and development.
4.
 - a) Enactment of legislation to ensure Crèches and Daycare services for women in the unorganized sector (Through setting up of labour welfare boards etc.).
 - b) Implementation of Welfare Provisions of existing legislation.
 - c) Amendment of existing legislation regarding provisions of crèches to ensure the limitation of gender and number (as a criteria for provision) is removed.
5. Child and women to be included in the list of socially disadvantaged groups.
6. Statutory scheme for Maternity Entitlements irrespective of birth order to be enacted to ensure wage support for maternity/delivery expenses and six months of breast-feeding care of infant. A sum of 15,000 crore should be allocated for this purpose.
7. ICDS to be Revised /Revitalized:
 - Outreach to under-two s;
 - Inclusion of crèches;
 - Issue of quality/ implementation/utilization of funds;
 - Remuneration and status of childcare worker;
 - Budget.

8. Crèche Scheme:

- **Revision;**
- **Allocations.**

9. Children's Code Bill should be opened to wide:

- **Issues of scope, powers, composition of board to be looked at;**
- **Section on young child re-examined;**
- **Type and source of funding proposed for children's code bill to be reconsidered;**
- **Exclusion of under sixes from Right to Education in 83rd(Constitution) Amendment Bill to be re-examined in the light of child rights, child survival and development implications.**

10. Revamp and Revitalize PHC's:

- **Staffing**
- **Essential drugs etc.**

11. Issues of decentralization in planning, implementation and monitoring of children's programmes.

- **Issue of flexibility.**

12. Issue of Adequate Funding.

FORCES RECOMMENDATIONS TO THE II NATIONAL COMMISSION FOR LABOUR

1. CENTRAL LEGISLATION FOR THE UNORGANISED SECTOR

The network recognise the importance of legislation despite the problems with implementation and makes the following recommendations:

a) New Legislation

Either

A Central Act for Manual Workers having various sectors of labour in its schedule should be enacted.

Or

Separate Central Laws for Agricultural Workers, Home Based Workers, Handloom Workers, Vendors and Hawkers, Loading and Unloading Workers, Salt Pan Workers, Domestic Workers and Construction Workers (existing)

All laws must include the provision for maternity benefits breast feeding breaks and childcare services as part of the entitlements of working women

b) Amendments

- The Construction Workers Act must include workers in quarries, brick kilns, lime kilns etc.
- Provision for Crèches must be included in the Rules. The provision for crèches must be made irrespective of numbers and gender of workers employed. Implementation of these services to be carried out by CLWB (Construction Labourers Welfare Board)
- Amendments to Shops and Establishments Act and Contract Labour Act to include entitlements to Child Care Services;
- Amendment to Bidi Workers Welfare Fund Act to include creches. The quantum of Maternity Benefits to be increased manifold from the pittance of Rs. 250/- and similarly the quantum of pension given to workers affected by various occupational diseases like tuberculosis etc. should also be increased.

2. RECOMMENDATIONS FOR TRIPARTITE BOARDS

(a) All constituted 'Welfare' and other Tripartite Boards must have proportional representation of women.

(b) Tripartite Boards must be set up by State Governments sectorally through notification

(c) Representatives of Workers should be elected rather than nominated

(d) Boards to be set up at District, Taluka and Municipality and Zonal levels

Existing:

Labour Welfare Boards for Unorganized Sector – Kerala and Tamilnadu:

In Kerala in all the existing Labour Welfare Schemes for the Unorganized Sector there is no provision for crèche. The provision of Maternity Benefit in various Schemes has Two-Child Norm. Creches must be included in the Schemes and the Two-Child Norm removed.

In Tamilnadu the Construction Workers Welfare Scheme has crèche provision but unimplemented till date. Maternity Benefits is fixed as Rs. 2000/- in Welfare Schemes for Construction, Agriculture, Tailor etc. but has Two-Child Norm.

Creche Provision must be included in all Welfare Schemes and implemented. Two-Child must be removed from the maternity Benefits and the quantum must be corresponding to minimum wages and price- index.

3. EXISTING SITUATION AND MONITORING OF CHILD CARE SERVICES:

The large number of ICDS Centers cater to the Child Care needs of the crores of unorganized women labour in our country but they need to be converted to full fledged Child Care Services.

The existing Child Care Services and Maternity Schemes are implemented by the State Governments and supported by Centre. The Quantum of Maternity is normally fixed and at no level (around Rs. 500) and with a Two-Child Norm. The ICDS Scheme does not cater to children below three years and the money allotted is very low. The AWCs have bad infrastructures and the Child Care Workers function with low wages. Hence a thorough revision of the Schemes need to be carried out and monitoring should be done at various levels in participatory manner.

Committee to be set up at State, District and Block level immediately to evolve policies and monitor the policies on maternity and child care services. The Committee should have majority representation from NGOs involved in Childcare, Women's Organization and Trade Unions.

4. GOVERNMENT AS 'IDEAL' EMPLOYER

The Commission must ensure that government agencies (specially construction agencies) follow the rules for minimum wages and crèches on work sites and strictly implement other existing laws, policies and schemes for labour 'welfare'.

5. EMPLOYEES STATE INSURANCE CORPORATION SCHEME TO INCLUDE UNORGANISED SECTOR.

6. CHILD CARE WORKERS:
(Employed but not recognized as workers)

- A) ICDS WORKERS: More than 10 lakh women workers**
- B) GOVERNMENT AIDED CRECHE AND OTHER SCHEME WORKERS;**

Their wage category should be declared in the schedule for minimum wages
Recommended wage is at par with Primary School Teacher as promised in the 1986-National Policy on Education. All Social Security measures such as Maternity Benefits, Provident Fund etc. should also be made available to them.

7. CHILD LABOUR AND EARLY CHILDHOOD CARE AND EDUCATION (ECCE):

A) SIBLING CARE AS A CATEGORY OF CHILD LABOUR:

With the work participation rate of women increasing under SAP (see Annexure 1), the increasing casualization of labour, the migration to urban areas and breakdown of family systems, there is increasing use of siblings for care of younger children (see Annexure 2). This situation has implications for both the infant and the older child, especially girls: - In the absence of the mother or other adult caregiver, the infant receives less than adequate care at a stage of growth and development which the most vulnerable period of human life. . The consequences of this inadequate situation of childcare results in a high incidence of malnutrition (53% of children under 5s are malnourished, 52% are stunted) and the related syndrome of morbidity, susceptibility to infections, onset of disability etc.

Since the 0-6 year period has scientifically been established as being crucial for the development of the human brain and for laying the foundations of personality and confidence, poor physical and cognitive development caused by inadequate care to feeding and adult nurturing, results in lifelong impairment for the child. Interventions of State feeding programmes as in midday meal programmes and through ICDS etc. cannot reverse the damage in development that has already taken place in the first few years of life – particularly during 0-3 years.

As far as the older child, particularly girls, are concerned, not only does their own physical and cognitive development get impeded in a similar way but they cannot enrol in school because they are required for care of younger children and household responsibilities. Poor health, poor skills, illiteracy inevitably opens the door to child labour, child prostitution etc.

Provision of Crèches for women working in the unorganised sector is therefore an absolutely essential intervention for both the young child's survival and development and preparation for formal schooling, school entry and retention and to release the older sibling for school entry too. It also has wide implications for improving the health and economic productivity of women.

B) INCLUSION OF THE UNDER SIXES IN THE RIGHT TO EDUCATION – CONSTITUTION 83RD AMENDMENT BILL.

This Bill is scheduled for discussion in Parliament in the coming Budget session. As it stands, it excludes children under six from the right to education, which was promised them through Art. 45 of the Constitution and made into a fundamental right by the Unnikrishnan Judgment in 1993. This is a very serious retrograde step and will affect poverty groups directly. Families in these groups are in no position to provide the Early Childhood Care so vital for the development of the young child and, restricting State responsibility towards this age group will directly affect the preparation for school, which is based on healthy growth of the child, emotional security and preschool stimulation. Only those classes of people who can afford to nurture their young children and provide them preschool opportunities will be able to take advantage to the right to education from 6-14 years as proposed in the Bill.

Every attempt, therefore, needs to be made to ensure the inclusion of 0-6 age group under the new proposed legislation so that children of poverty groups have equality of opportunity in the school system. If the problem of child labour is to be tackled at the root, state responsibility for ECCE must be ensured.

- 8. FINALLY, THE COMMISSION MUST ADD ITS WEIGHT AND VOICE TO THE STRUGGLE AGAINST PRIVATISATION, CLOSURES, IMPORT LIBERALISATION, ENTRY OF MNCs, EVICTIONS OF SLUM DWELLERS AND HAWKERS AND DISPLACEMENTS THAT ARE GOING AGAINST THE LABOUR CLASS OF THIS COUNTRY.**

CHILDREN vs THE STATE; The Politics of Child care

Historically, child care, in all its dimensions, has always been considered the domain of the mother, or, at best, the family. However, in the last few decades, and increasingly, the issue is making itself felt as one that is fundamentally related to and has wide implications for society as a whole. Simultaneously, there is also growing impatience with the fact that the state has largely failed in its responsibility towards the child.

Nobody in their right mind would deny that children are valuable and need looking after. Why is it, then, that the issue of child care, urgent and critical to those of us working with children, continues to be victim to ignorance, laxity and neglect?

The reasons are manifold and complex. Children in any culture or class are the most invisible section of society. Considered voiceless, they depend entirely upon adults to present, or allow them to present their case. Their non participation in the 'vote bank' denies them weightage on the political agenda, and even the well intentioned, including their parents, do not fully understand or acknowledge their needs or rights, or even the fact that they have rights at all.

What is more, it is not adequately acknowledged that for children to avail of their right to childhood, it takes informed and caring *adults*, and of course, resources.

The lack of a well informed, fully sensitized and effective lobby is further compounded by the fact that the problems of children are inextricably linked with the entire gamut of the social and political ailments of the country of which they are the 'ultimate victims'. It would not be an exaggeration to say that even within this stratification, the girl child forms the lowest rung.

There is little doubt that the gaps between rich and poor have only increased in the last many years. The 'poor' have also increased in numbers. Where 33% families existed below the poverty line in 1987-88, that number has increased to almost 50% in 1996¹. Increasing unemployment within the organized sector has led to a simultaneous increase in women (and children) joining the workforce as casual labour working in fields, factories , on construction sites, as domestic workers or working on contract at home; attractive since they are paid less and are easier to exploit in every possible way. Many more families are now solely dependent for their very existence upon such women, who often travel vast distances every day just to make a non too certain daily wage, coming back to cook , clean and prepare for another day. Whole families migrate in search of work and wages, losing out on traditional support systems, particularly those relating to child care. It is not difficult to imagine where a young child fits into this scenario. Crying atop a heap of rubble, or left home in the care of a slightly older child, the situation is hardly one that nurtures survival, growth or development.

In this situation of temporary, casual and unguaranteed work, the relationship between employer and employee is so tenuous as to hardly exist. Many levels of contractors and sub contractors exist between the 'unorganized' labourer and a principal employer, trade unions do not exist, and laws and policies relating to labour are almost impossible to access. Even a minimum wage is hardly ever received.

Notwithstanding, the facts of a woman's life are such that she manages, at great but unacknowledged cost, to combine all this with child bearing and rearing for the largest part of her life. Wherever there is paucity, the last to make demands, and therefore receive, are women, children, and the girl child, in that order. This hits them where it affects not just quality of life, but sheer survival as it translates to being the last in line for food, health care and education. The cyclic effect of this deprivation, both real and relative is devastating. Undernourished, sick girls become mothers and produce low birth weight sickly babies handicapped from birth. The fact that one third of the babies born in India are underweight hence becomes a comment on the status of the entire female race of the country.

Therefore, to look at women or children in isolation, is to look at only half the picture, and to plan for one without the other, as has been done for too long, is to leave plans quite incomplete.

As illustration, no income generation scheme or scheme for adult literacy can be considered well formulated without provisions for child care to allow women to participate, and no scheme that intends to improve the lot of the child can afford to exclude its family, community and environment. In particular, it must target the girl child, the pregnant woman and the young child to break the vicious cycle of poverty breeding poverty.

Today, there is also a growing awareness of the value of Early Childhood Care and Development (ECCD) as a worthwhile investment, even in terms of resource management alone. What could be more logical than trying to prevent, or 'manage' the problems children; "future adults"; are likely to face from the start of life itself, rather than intervening at a later stage.

That there is a need for State intervention in the 'eradication' or even alleviation of poverty would not need discussion if political manifestos were anything to go by; all party programmes abound in schemes for the 'poor'. **Significantly, most, of these, like the Minimum Needs Programme leave out child care facilities as a basic requirement without which many of the other 'needs' are impossible to meet, specially those of elementary education and adult education.** Again, this highlights the complete lack of political awareness, or will, regarding the rights of the child and their importance for society as a whole.

CHILD RIGHTS, CHILD CARE AND DAY CARE

It becomes clear that when families in the presented scenario are unable to provide adequate child care, and children are not in a position to partake of these programmes directly as individuals, that some vehicle has to be created to reach them. This intersection between the rights of a child and child care programmes are the *arrangements* for child care, the spectrum of which ranges from providing crèches at work sites where a working woman can breast feed, providing pre school facilities for the child 3-6 years, to empowering the woman at home to look after a baby better through supporting her to be *able* to stay at home, promoting informal neighbourhood child care arrangements, and again, better arrangements for her older children. The pre school and day care centre therefore, if used well, can **promote** good health, nutrition, growth and development for the child, **prepare** for school, and **prevent** the child from being in situations of abuse or put to labour. The advantages to the woman are obvious.

SOCIO ECONOMIC SITUATION CREATING URGENCY

Sadly, none of these arguments have resulted in effective measures to tackle what is no less than a crisis requiring immediate and committed action, as urged by any and every report on the issue.

To quote only a few alarming facts and figures garnered from some of the same;

15 crore women living below the poverty line constitute the female workforce of India. More than 90% of these women are in the unorganized sector.ⁱⁱ

16% of the rural population have access to less than Rs 3 per day, and another 18%, less than Rs 5.ⁱⁱⁱ

6 crore children under 6 years belong to this group where their mothers have to work for their survival of which only 18.5 million are covered under Government schemes. Of these, a paltry 360,000 benefit from government and statutory crèche services,^{iv} a total of 14, 313 crèches being run by the government.^v Even these tend to convert to balwadis as they cannot cope with babies under 2 yrs for lack of required manpower and facilities.

The rest are largely taken care of by older siblings (5 - 14 yrs), often girls, who are then not available to schools.

Female literacy is at a poor 38% as compared to male literacy at 66%.^{vi}

India has the largest percentage of malnourished children in the world at 53% of total under fives, exceeding even Sub Saharan countries, at 31%.^{vii}

India has the largest number of child labour in the world, with 45 million children employed in the workforce.^{viii}

50% of children in the age group 5 - 15 yrs do not go to school.^{ix}

To use Childhood Mortality Rates as indicators of Child care,^x

Table 1.- Childhood Mortality Rates in the South Asian Region				
Country	U5MR			IMR
	Average annual reduction (%)			
	1995	1980-95	1995-2000*	1995
Sri Lanka	19	6.7	4.3	15
Nepal	114	3.0	9.8	81
India	115	2.9	9.9	76
Bangladesh	115	4.0	9.9	85
Pakistan	137	0.6	13.4	95
Bhutan	189	1.8	19.9	122
Afghanistan	257	0.6	26.0	165
South Asia Region	121	2.6	11.1	82
Industrialized nations	8	3.6	5.7	7

Countries arranged in order of increasing U5MR

* Required reduction rate to achieve the stated targets of IMR under 60, U5MR under 70.

U5MR - Under-5 Mortality Rates

IMR - Infant Mortality Rates

The Maternal Mortality Rate indicates that 570 women die out of every 100,000 due to complications from pregnancy or childbirth as compared to 140 in Sri Lanka and 13 in industrialized nations.

The prevalence of anemia amongst pregnant women is 88%^{xi}

THE CHILD AND STATE POLICY

It is with this background of arguments and facts, that we might analyze State policies and programmes for their intention and adequacy.

There is no denying that the State has promised to address the problems of child care all through its history and that there are no simple solutions. However, even today, there is a tendency to hold back from specific and solid measures that translate concern into action. Policies all through have been characterized by their 'vagueness' and lack of detail, leaving large convenient loopholes, by treating various **manifestations** of inadequate child care in patchy ways rather than attacking **root causes** in a comprehensive manner, and by failing

to make necessary **links** between women and children and the larger issues that affect them. When translated into programmes, they are similarly vague, short sighted, patchy, and **resource allocation** is invariably insufficient to cover even the provisions made, whereas the need is for a **nation wide comprehensive and integrated campaign** that focuses on prevention, uses a **multi pronged approach**, and carries enough resources to atleast allow a chance for success.

To summarize some of these 'promises', The Directive Principles of State Policy guarantee the right to education and the protection of the child. Significantly, Article 24 promises prohibition of employment of children in factories, Article 42, maternity 'relief', and Article 45 free and compulsory education for children below the age of 14 yrs. Of course, the child is privy to all the fundamental rights accorded to any citizen by the Constitution.

A major step in terms of policy was the National Policy For Children (1974) as an attempt to follow up on the Directive Principles and the UN Declaration of the Rights of the Child, 1959.

This reaffirmed the importance of children as a 'supremely important asset' and aimed for 'equal opportunities for development to all children'. It also stated that to achieve the above aim, 'the State will provide necessary legislative and administrative support', within ' a reasonable time'; a statement now 23 years old.

More recently, the Convention of the Rights of the Child, adopted by the UN General Assembly in 1989 and to which India acceded in 1992, expands the concept of child care to cover the rights of the child to survival, development, protection and participation, and enjoins its signatories to bring its legislation in line with the provisions of the Convention laid out comprehensively in its 54 Articles.

India was also a signatory to the World Declaration (Sept 1990) in the Survival, Protection and Development of Children and the Plan of Action for implementing it.

It was to this end that a 'National Plan of Action' was formulated as a commitment to the child by the Department of Women and Child Development, Ministry of HRD, in conjunction with NGOs and social activists in 1992. This set targets and objectives and laid out activities for achieving these in the sectors of Health, Nutrition, Water and Sanitation, Education, Children in Especially Difficult Circumstances, Girl Child, Adolescent Girls, Children and the Environment, Women and Advocacy and People's Participation.

1994 saw yet another National Consultation organized jointly by Indian Council of Child Welfare, United Nations Children's Fund and the Department of Women and Child Development to determine the extent to which the rights of the child had become a reality following India's ratification of the CRC. However, the final report of this consultation is not yet available.

Day care services, focal to the implementation of the CRC for the young child and derived legally from Article 45 of the constitution, do not receive a formal reference in policy till the New Education Policy in 1986. Subsequently, the 'Shram Shakti Report, 1988, and the 'Ramamurthy Commission Report, 1990 identified day care services as very important for the empowerment of women, children and specifically the girl child, and spelled out strategies in this regard, finally taken into consideration in the Plan of Action of the NEP in 1992.

Apart from problems of inadequate definition, some policies have, by their rhetoric, created a conceptual environment of helplessness and acceptance, albeit apologetic, that has been much more inimical to real change and set the stage for the inadequacy of the policies that flowed from it. The above mentioned NEP is a perfect example.

Its basic assumption, highly debatable in the light of widespread NGO experience since, was that the income from child labour is what keeps the home fires burning. This led to the reinforcement of Non Formal Education as a major thrust area for the population that 'cannot' be enrolled into local schools, and accepted child labour as a 'harsh reality', without confronting the issue, its root causes (of poverty, adult unemployment, unavailability of relevant primary education etc), and strategies for definitive prevention at all. Ten years later, the struggle against child labour continues and free and compulsory primary education for all children is still a dream.

EXISTING PROVISIONS AND PROGRAMMES

Apart from the provisions of the Directive Principles mentioned above, and the fundamental rights as laid down in the constitution, Some industrial acts (the Factories Act, the Plantations Act, the Mines Act, and the Interstate Migrant Workers' Act) provide for day care services at the workplace. However, these, obviously, provide only for a few areas of organized labour, and have often backlashed by causing discrimination against the employment of women.

The ICDS continues to be the main vehicle for State run programmes for child care.

Integrated Child Development Services Scheme (ICDS)

Started in 1975, this scheme was envisioned to be and has remained the prime vehicle for reproductive and child development services for women in the reproductive age group and children under 6 yrs.

It aimed to improve nutritional and health status, thereby reducing malnutrition, morbidity and mortality , lay the foundations of healthy all round development of the children, and provide health and child care education to their mothers. However, there are many implementational difficulties that are intrinsic to the structure of the scheme itself. **Day care has not even been mentioned** as one of the functions of the scheme, though a small number of 'anganwadis' in a few states have been extended to provide day care

funded by the National Crèche Fund. Moreover, the entire 3 hour programme, including extension work in the community hinges upon a single anganwadi worker who is paid an 'honorarium' of only 400 Rs (recently increased to about 500 Rs after country wide agitations for a raise). Though the scheme is meant to impact children from birth to 2+ (a period considered crucial to growth and development) through providing immunisation and nutritional support, coverage has been limited because full day care services are not provided and the working mother is never available during the working hours of the centre. The scheme is therefore accessed by older children who can make there own way to the centre and back, younger children remaining largely untouched.

In its favour, it has provided a conceptual framework for integrated mother and child care services, and fulfilled its mandate to both to some degree for the population reached, with maximal impact on immunisation.

The ICDS is reaching out to 3.7 million expectant and nursing mothers and 18.6 million children under 6 yrs. Of these, 10.8 million (3-6 yrs) participate in centre based pre school activities.^{xii}

The ICDS came in for expansion during the Eighth Five Year Plan, and now stands sanctioned in all 5320 development blocks of the country, besides 310 urban slums. However, considering that this is practically the only scheme existing for mother and child services, and soaks up the lions share of the budget for the same (682 crores out of the total 847 crores allocated to Dept. of Women and Child Development, 1996-97), no attempt has been made to simultaneously resolve the problems listed above which are both conceptual and structural.

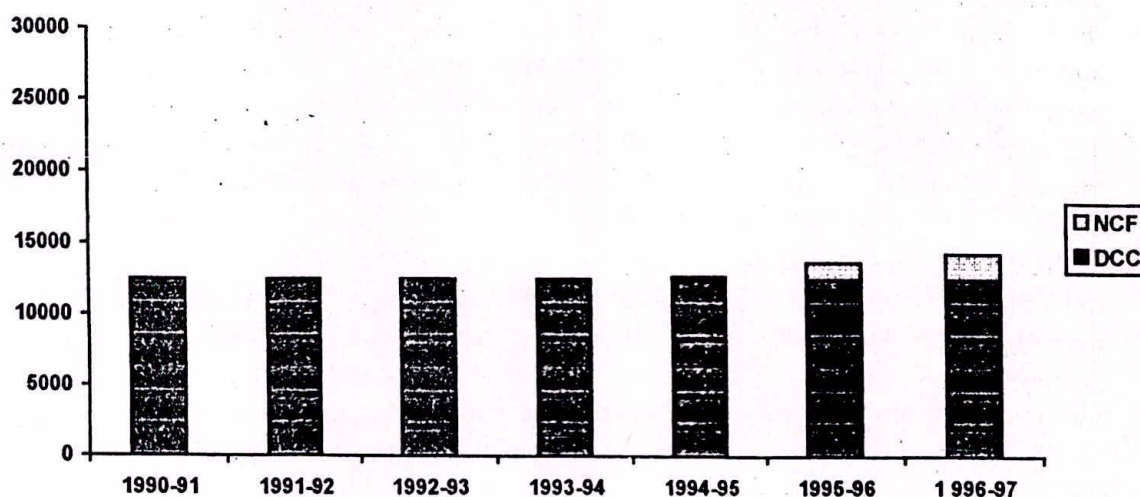
Following the innovations tried in some blocks gives an indication of the trends of the scheme.

Crèches/Day Care Centres for Children for Working /Ailing Mothers

This scheme is being implemented through the Central Social Welfare Board, Bhartiya Adim Jati Sewak Sangh and Indian Council for Child Welfare cumulatively running 12470 crèches. The number of crèches has remained the same since 1990 under this scheme, catering to only about 3 million children, though the requirement is about 20 times greater. Again, these 'crèches' cater largely to the child 3-6 years old, due to inadequate staff, money, time and facilities.

National Crèche Fund

Set up during 1993 - 94 largely as a response to concerted pressure by the growing 'child care lobby, including the 47 member organisations network 'Forum for Crèches and Child care Services (FORCES), this gives assistance to voluntary organisations to set up crèches. It is funded by the interest accrued from a corpus fund of 19.9 crores (though a 100 crore budget is estimated to meet crèche requirements for underprivileged children!) and is currently funding 1843 crèches in all.



Estimated requirement of crèches: approx. 250,000

Early Childhood Education Scheme

Started in 1982, this scheme was designed to prepare children of the age group 3 - 6 yrs for school entry. Currently 4365 ECE centres are being run by voluntary organisations in nine educationally backward states. Financial assistance to each centre amounts to Rs 7980 per annum, which includes the honorarium of one teacher. This scheme is to be phased out with the universalisation of the ICDS.

Development of Women and Children in Rural Areas (DWCRRA)

This scheme was introduced in 1982 to add focus to the already existing Integrated Rural Development Programme and aimed to enhance women's earnings by encouraging self employment.

It now extends to all districts from the initial 50. Community Based Convergent Services (CBCS) was added as a component in 1991, attempting to provide an umbrella for all the various schemes and programmes that benefit rural women and children. **Child care activities were specifically incorporated in the scheme during 1995 - 96 to provide day care, literacy for women, fill in critical gaps in immunisation, nutrition etc., to provide assistance and facilities to the physically handicapped, and immediate relief and legal assistance in cases of physical abuse of the girl child.** The recent initiatives in this scheme are given an additional 1.5 lakhs per district. In a sense, of all the current schemes operating for women and children, this 'new' DWCRRA seems the most progressive in terms of the *stated* mandate of the scheme.

Urban Basic Services Programme

The urban poor account for 8 crores of India's population^{xiii} of which 65% are women and children. This group is further characterized by widespread migration to and from rural areas, and subject to the most abject living conditions to be seen in the country. The UBSP was started during the Seventh Five Year Plan to alleviate urban poverty by a process of community participation and convergence of schemes and programmes, and identified women and children as a key target group. However, specific activities have not been identified as possibilities. Though Balwadis have been organized by community participation, crèches are conspicuous by their absence.

Nutrition and Health Programmes

Of the number of national programmes relating to children, the major ones are the Child Survival and Safe Motherhood Programme consisting of the Universal Immunisation Programme, Vitamin A prophylaxis Programme, Diarrhoeal Diseases Control Programme, Programme for control of Acute Respiratory Infection, and 'Safe motherhood initiatives' for the 6 high MMR states. nutrition related programmes include Special Nutrition Programme, Balwadi Nutrition Programme, Midday Meal Programme, ICDS Programme, Iodine Deficiency Disorders Control Programme, Prophylaxis against Nutritional Anaemia.

The National Maternity Benefit Scheme (NMBS) gives a lump sum of 300 Rs each for the first two live births of a women over 19 yrs who is below the poverty line. Obviously, this scheme is highly short sighted and inadequate.

Along the decades, successive Five Year Plans have also reaffirmed the increasing commitment to the Indian child. To look at the Ninth five Year Plan in this regard;

The Child and The Ninth Five Year Plan

The Ninth Five Year Plan acknowledges that growth during the last five years has not benefited the 'poor and the underprivileged'. It also prioritises schemes that benefit women and children. A greater integration of DWCRA with IRDP and TRYSEM (Training of Rural Youth for Self Employment) will be attempted to provide women's' groups with greater access to financial resources and training, with replication of successful DWCRA models.. Apart from meeting targets for indicators of Mother and Child health, the Plan promises to provide 'need based, client centered, demand driven high quality, integrated Reproductive and Child Health care.' The ICDS is to be universalised, with *priority to focus attention on the child below two years*. ' Mini Anganwadis' have been envisaged to cover remote pockets inhabited by Scheduled Tribes

and Primitive Tribal Groups. Supplementary feeding programmes are also to be universalised with a *special package for the girl child and children between 6 and 23 months*.

The existing National Policy for Children is to be suitably reviewed in the context of the CRC.

Again, child care through day-care does not find specific place in the Ninth Plan either as a strategy for the empowerment of women, or as a means of implementing the 'focus' on the child below two years if required, nor does the Plan suggest universalising, or even extending the limited crèche component of the ICDS. **In other words, though providing hope in terms of a favourable direction, it stops short of making a firm commitment, just as has been the precedent with other policy statements.**

RESOURCES FOR CHILDCARE

No policy is implementable without adequate resources and resources are not likely to be allocated for activities not *specifically mentioned* within a programme. These dual problems have already been seen in the preceding sections of this article to beset the issue of child care, and specially, day-care, as a vehicle for child care to children who cannot be looked after by the family due to reasons discussed above.

Even amongst programmes specifically relating to child care, the relative lack of resources for the ICDS, the National Crèche Fund, the ECE Programme, only serve to prove the relatively low priority set for child care, even though it should not be difficult to see that investing in child care offers great benefits in other areas in terms of other programme efficacy and efficiency, apart from the actual economic benefits of empowering women to work and producing a breed of economically productive citizens, reducing the burden on 'alleviation' programmes by investing in prevention, and so on. Unfortunately, this kind of far sightedness is rarely reflected in the country's budgets, and the current budget is no exception.

The following allocations are seen in this year's budget;

Total expenditure is estimated at 232,176 crore of which 2.5% (6025 crore) has been allocated to schemes for the poor i.e., an allocation of 2.5% for 40% of the population. 330 crore has been set aside for slum development (Not even sufficient for the development of slums in one major city!^{xiv})

In comparison, the defense budget is 35,620 crore, 15%

Also, almost half the 'savings' under Central Plan spending in the previous year have been as a result of cut backs in crucial areas of welfare, such as the 40% (600 crore) cut back in the budgeted expenditure on the mid day meal scheme and the 460 crore cutback in rural employment and other development schemes.^{xv}

In the period 1996-97, the total expenditure of the Central Government was 87086.2 crore, of which the distributions were as follows; education 3.9%, health 0.9%, family welfare 1.8% as compared to 11.7% for defense.^{xvi}

Development Expenditure, in terms of percentage of GDP has declined from 12-5% in 1985 - 86 to 7-7% in 1996 - 97, indicating the withdrawal of the state from the sector, and at complete variance with the objectives outlined in most policy statements.^{xvii}

It has been seen that the resources for closing the poverty gap and eliminating extreme poverty amount to about 4% of the national income. Therefore, it is largely a myth that government cannot afford to guarantee basic positive rights, specially adequate nutrition, primary health care and basic education to all of their children.^{xviii}

It has also been computed that as little as 5 Rs per child per day can ensure full and good quality day care; amounting to barely 1% of the GNP to cover 60 million children.

Only recently, the United Front government promised 6% of the GNP for 'education' by 2000 AD as per the minimum needs programme. Though this is by no means sufficient for what it intends to achieve since it includes the costs of the mid day meal programme, it would be better invested had some thought (and resource allocation !) been made simultaneously to day care, thus intervening in child labour, the availability of the older sibling for school, and preparation for school entry in one shot.

THE CHILD AND THE LAW

It is clear that though some advance has been made in terms of policy, whatever be the lacunae in implementation, the 'Rights' approach demands that the State also be *legally* accountable to its children. The reason why this process has been far from satisfactory despite so much public and vocal commitment stems from two main objections; first, the role of the State in determining the manner in which children to be cared for and concerns about the harassment of parents, the second - fears regarding the inability of the State to implement such laws, relegating them to paper only.

As far as the first argument goes, it is hardly valid considering the fact that legislations exist on all sorts of 'private' activities ranging from marriage to the protection of a large number of civil rights.

The second argument views the issue from the administrative side alone, not recognising the **importance of legislation as a tool** for social activists to take action against the State (or perhaps recognising this only too well!). That is, appropriate legislation is 'an enabling provision whereby the State can be compelled to take action.'^{xix}

Therefore, it is worthwhile to examine existing laws and their deficiencies in this context.

The child, of course, enjoys all the fundamental rights available to any citizen of the country. However, the difficulties in their implementation, the need to translate the Directive Principles into legislative policies, the special vulnerability of the child, and their distinct developmental needs have given rise to specific central and state legislation's at various stages of which there are many. Most of these focus on protection and are negative in character.

Though an analysis of all the existing laws is not within the scope of this article, priority areas can be demarcated. These include the reviewing and revising of laws to enable and

facilitate affirmative action by the State and address existing lacunae, strengthening enforcement machinery, ensuring a uniform definition of the child as persons below the age of 18 yrs and a comprehensive review of the Juvenile Justice Act to make it more effective and child friendly.^{xx} Comprehensive legislation under a National Child care and Maternity umbrella is essential to set the commitment to the CRC into motion effectively.

Some legal provisions must be brought into implementation immediately, such as the long overdue promise of free and compulsory education..

The specific needs of the girl child need to be addressed urgently, with more stringent laws banning sex selective foeticide (Prenatal Diagnostic Techniques Act was brought into force in 1996), enforcing minimum age of marriage and anti dowry legislation. ^{xxi} Better laws are required for sale of children, child prostitution, child pornography, child sexual abuse and children in difficult circumstances.

Women must be legally empowered to breast feed exclusively for six months and to continue breast feeding into the second year. Paternity benefits should be made available for men to participate in child rearing. (The only law that deals directly with this issue is the Maternity Benefits Act, 1961, that is a negatively worded law prohibiting dismissal or discharge during pregnancy and arduous work for 10 weeks preceding pregnancy if objected to. It also allows for up to 3 months of maternity leave, with an additional 1 month of leave with pay in case of pregnancy related complications. Apart from the obvious inadequacy, this excludes from its ambit all the working women in the unorganized sector, amounting to 93% .)

These steps must be accompanied by the sensitisation of judicial institutions, law enforcing agencies and the development administration to become more child friendly, demystification of the concept of the rights of the child, and advocacy at every level.

CONCLUSION

Child care is an activity that needs to be recognised to be skilled, since it deals with growing, developing and specially vulnerable group, the well being of which is fundamental to the well being of all society. Therefore, though expensive, it should be considered a worthwhile investment in the long term, specially since it facilitates returns from most other investments in the developmental sector and ultimately cuts *down* the need for such investments by its positive cyclic effect.

Since this argument has already been accepted not once but many times in national and international fora, it must be supported by meaningful policies, translated into effective programmes and supported by positive and enabling laws.

In all three arenas, the urgent need is to accommodate **women in the unorganized sector** as the majority, the ones invariably side lined though most needy, and the most difficult to reach.

Laws and policies for women and children should be **converged** for effective coordination, proper estimation of resource requirements and identification of gaps and overlaps. All existing laws and policies for women and older children must be modified to ensure that *specific* thought is given to provisions for children and child care if found to be necessary.

However, as far as 'programmes' are concerned, needs assessment, programme design and planning, implementation, monitoring and evaluation must be **decentralised** as far as possible, for instance, to Panchayats, in recognition of the fact that child care needs are intimately related to the particular situation of the child and the community she belongs to, requiring **flexibility** to meet those needs best.

The resources for these programmes must continue to be the responsibility of the state in consonance with other poverty alleviation programmes, minimum needs programmes etc. since the socio economic situation is not one to allow withdrawal. A fixed minimum proportion of the national income should be made available for this purpose. This in no way rules out community resource mobilisation and management wherever possible.

Finally, none of this can happen without political commitment and will, which if not spontaneously forthcoming, will have to be created by advocacy at all levels and a nationwide determined campaign by all of us who claim to be concerned for the child and the future of our society.

Dr Vandana Prasad

Forum for Crèches and Child Care Services (FORCES)

ⁱ The Times of India, 4 Feb 1996

ⁱⁱ Forum For Crèche and Childcare Services (FORCES)

ⁱⁱⁱ NCAER, Study of 33,000 rural households, 1994

^{iv} FORCES

^v Annual report Part IV, 1996 - 97, Department of Women and Child Development

^{vi} The State of the World's Children, 1997, UNICEF

^{vii} Human Development Report, UNDP, 1997

^{viii} State Of The World's Children, 1997, UNICEF

^{ix} State Of The World's Children, 1997, UNICEF

^x State of the World's Children, 1997, UNICEF, Compiled by S. Ramji, Indian Pediatrics, Vol 34, May 97

^{xi} National Draft Population Policy

^{xii} Annual Report 1996 - 97, Dept. of Women and Child Development

^{xiii} 1991 Census

^{xiv} Jayshree Vyas, Anusuya, April 1997

^{xv} Sukumar Muralidharan, 'Substance and Artifice', Frontline, March 21, 1997

^{xvi} Economic Survey, 1996-97

^{xvii} Reserve Bank of India, Report on Currency and Finance, 1995-96

^{xviii} National Performance Gaps, Partha Dasgupta. The Progress of Nations, 1996. UNICEF

Forum for Crèche and Childcare Services

MEMORANDUM OF OPPOSITION

Dear Madam / Sir

As you are aware, the proposed 83rd Constitutional Amendment Bill seeks to provide free and compulsory education to children from 6 to 14 years even though Article 45 from which it has been derived promises free and compulsory education to all children upto the age of 14 years.

Amongst the various reasons discussed for this cutback in the Parliamentary Standing Committee Meetings and other fora, are the presumptions that EARLY CHILDCARE AND EDUCATION are the domain of the family, or that it has already been taken care of by the Department of Women and Child Development, or that it is too complex a task to be undertaken under the proposed Act.

As a forum the primary concern and area of expertise of which is children under the age of six we (the signatories) would like to respond to some of these invalid arguments and voice our strong opposition to the proposed 83rd Constitutional Amendment Bill in its present form.

Consider the following facts:

1. EARLY CHILDHOOD CARE AND EDUCATION IS A FUNDAMENTAL RIGHT, AS RULED BY THE SUPREME COURT IN 1993 DERIVED FROM ARTICLES 21 AND 45 OF THE CONSTITUTION OF INDIA.

THIS BILL DIRECTLY CONTRAVENES A DIRECTIVE PRINCIPLE, THE CONVENTION OF THE RIGHTS OF THE CHILD, AND A PREVIOUS SUPREME COURT JUDGEMENT.

2. EARLY CHILDHOOD CARE AND EDUCATION IS A WELL ESTABLISHED COMPONENT OF EDUCATION which influences the most vital period of development of human beings, namely the first few years of life. It has immense repercussions on future life in terms of intelligence and personality. These effects have been quantified and seen to be related statistically to drop out rates, school retention and school performance.

3. IN THE GIVEN SOCIO ECONOMIC CIRCUMSTANCES OF THE MAJORITY OF THE FAMILIES OF OUR COUNTRY, ECCE CANNOT BE SEEN TO BE A FUNCTION THAT FAMILIES CAN PERFORM UNSUPPORTED BY THE STATE, as reinforced time and time again by various reports like the Shram Shakti Reprt and the Ramamurthy Commission Report. 90 million women work in the unorganised sector. 93% of all working women belong to the unorganised sector. 60 million children under six are under the poverty line. About 80 million

children are out of school and all of them work, either for wages or as helpers for domestic work and sibling care since both parents work. 70% of children involved in child care activities are girls and account for the vast majority of girls never enrolled in or dropped out of schools.

4. There are about 100 million children of age 0 - 6 yrs of which 60 million are below the poverty line. Only 18.6 million are within the outreach of the Integrated Child Development Scheme, virtually the only scheme designed to reach this age group. The budget-allocated for this scheme which has been scheduled for universalisation since the 8th plan is about 700 crores, amounting to 70 rupees per child per year, or 19 paise per child per day!

THEREFORE TO SUGGEST THAT EARLY CHILDCARE AND EDUCATION ACTIVITIES ARE ALREADY TAKEN CARE OF BY THE MINISTRY OF HRD IS INCORRECT.

5. If this Bill be passed, it would ensure that ONLY THOSE SECTIONS OF SOCIETY WHO CAN AFFORD PRIVATE PRE SCHOOL WILL BE ABLE TO AVAIL OF ITS BENEFITS, WHICH AUTOMATICALLY RULES OUT ALL THE CHILDREN WHO NEED FREE EDUCATION.

6. It is further short sighted to provide free schooling upto 14 yrs or class 8 when the first board certification is at 16 or class ten. It is of note that most vocational training programmes and entry into a 'reserved' category require a minimum of schooling through the 10th class.

7. We have serious reservations on the financial clause which is grossly inadequate even for schooling for the 6 to 14 age group requiring a threefold increase. The projected cost of EARLY CHILDCARE AND EDUCATION through comprehensive and integrated daycare lies at a minimum of 18.250 crores

We insist that

EDUCATION IS NOT MERE SCHOOLING FROM 6 - 14 YRS BUT A DEVELOPMENTAL ACTIVITY

- appropriate in content and process to the age, development stage and cultural context of the child.

- in diverse settings, not necessarily institutional in nature, in case of children below 6 years

- provided by appropriately qualified persons recognised for ECD as equivalent to elementary school teacher

- of a quality adequate to achieve the learning competencies essential for each stage of development

- able to harness and mobilise, through requisite regulation / legislation and incentives, the full range of governmental and non governmental initiatives available

(the above definition modified from NCERT Consultation on ECE and Bill on Fundamental Right to Education, March 25th, 1998)

II. THAT THE WORD 'COMPULSORY' HAS THE POTENTIAL TO BE MISINTERPRETED AGAINST PARENTS, AS HAS HAPPENED IN SOME STATE POLICY SUCH AS IN TAMIL NADU, AND THAT IT IS MADE REDUNDANT BY THE PRESENCE OF THE WORD 'SHALL'. THEREFORE, THE RECOMMENDATION IS THAT "THE STATE **SHALL** PROVIDE FREE AND UNIVERSAL EDUCATION TO ALL CHILDREN UPTO 14 YEARS" AS INTENDED BY THE FOUNDERS OF THE CONSTITUTION.

III. THAT PEOPLE'S PARTICIPATION BE BUILT INTO ANY LEGISLATION PERTAINING TO THE SAME AT EVERY LEVEL OF MONITORING OF THE PROCESS OF IMPLEMENTATION TO PREVENT THIS FROM BECOMING YET ANOTHER LAW THAT FAILS TO TRANSLATE INTO ACTION.

Ref. :

Date :

His Excellency,
Shri K.R. Narayanan,
Hon'ble President of India,
Rashtrapati Bhavan,
New Delhi-110 001.

***Subject: 83rd Constitution Amendment Bill –
Attrition and Dilution of Art 45***

Hon'ble President,

This is to draw your attention to the fact that the Constitution of India is to be amended by the Constitution 83rd Amendment Bill, 1997 making Education a Fundamental Right. This amendment will affect 375 million children of our country and dilute the goal of Universalisation of Elementary Education that the Constitution promised to our children over a half century ago. It also attacks the roots of equal opportunity for all as enshrined in Article 14 of the Constitution.

As you would be aware, the very formulation of Article 45 in the Directive Principles of State Policy was to ensure free, compulsory and equitable education **to all children up to the age of 14 years**. In 1997, the Government of India tabled the 83rd Amendment Bill (Bill No.XXXIX of 1997) in the Rajya Sabha. Many groups and individuals across the country expressed their concerns regarding the Bill to the government and sent a flood of memoranduma time and time again. However, in spite of all such efforts, we have not able to get a response from the government on our concerns.

We believe that this Bill is to be come up once again for discussion shortly.

From the Draft Bill, 1997, as tabled in the Rajya Sabha in that year and the statements made by the Minister concerned over the last two years, our concerns persist that the Bill in its present available form is unconstitutional because it:

- deletes Article 45 and limits the right to education to children between 6-14 year age group by insertion of Article 21A(1)
- violates the right to equal opportunity under Article 14
- dilutes the vision of a common school system through the proposed Article 21A(3)
- places the onus of providing the opportunity for education on the parents as their 'fundamental duty', which is evidently unfair and unjust in the prevailing socio-economic scenario.

Having received no response from the government to all our communications and pleas we are left with no option but to seek your intervention in this regard. We urge you to take all possible steps to prevail upon the government to bring the proposed constitutional amendment in conformity with the letter and spirit of the Constitution of India, in consonance with the aspirations of the people of the country and for the well being of the children of our country. If necessary, we urge you to exercise the power vested in you by Article 143(1) of the Constitution in seeking the opinion of the Hon'ble Supreme Court on the Constitutional validity of the proposed Bill its present form.

For your reference, our concerns and reasons for them are appended in detail.

We know that you fully understand the need and the value of Education for All and the ramifications of declaring elementary education a fundamental right. We are vesting our confidence in you to ensure that the letter and spirit of Article 45 are not tampered with and the Constitutional commitment to our children is not diluted by this Amendment.

Sincerely,

Devika Singh
FORCES Secretariat

On behalf of All India Networks and Coalitions – NAFRE, CACL, CIEE, FORCES, BJVJ, IAPE, and concerned individuals, organizations and educationists.

List of Annexures

- I. List of Groups, All India Networks and Coalitions supporting the Petition
- II. Legal and Constitutional Issues
- III. Background Note on Art 45
- IV. 83rd Constitution Amendment Bill
- V(a) Social and Educational Implications
- V(b) Coverage of 0-6 age group by State Programmes, Allocations and Gaps, 2000-2001
- VI. Questions and Comments Pertaining to Specific Clauses of the Constitution (Eighty-Third) Amendment Bill, 1997
- VII. An Alternative Bill on 83rd Amendment to the Constitution

List of Groups, Networks and Coalitions
supporting the Petition

- Shri Sanjiv Kaura
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National Alliance for Fundamental
Right to Education (2400 grassroot organizations)
DDA Slum Wing, Barat Ghar,
Bapu Park, Kotla Mubarakpur,
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- Ms. Mina Swaminathan
Forum for Crèche and Childcare Services
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C/c Mobile Crèches
D.I.Z. Area, Sector – IV,
Raja Bazar, Near Gole Market,
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- Mr. J. John,
Centre for Education and Communication
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New Delhi – 110017 Sd.
- Smt. Freny Tarapore
President
Indian Association for Pre-School Education
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- Smt. Jaya Srivastava
Campaign Against Child Labour
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- Prof. Anil Sadgopal
Head and Dean, Department of Education
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And
National Convenor
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Smt. Enakshi Ganguli HAQ – Centre for Child Rights 208, Shah Pur Jat, Near Khel Gaon, New Delhi	Sd.
Dr. Lotika Sarkar Centre for Women’s Development Studies (CWDS) 25, Bhai Veer Singh Marg, New Delhi – 110001	Sd.
Dr. Janaki Rajan SCERT Varun Marg, Defence Colony New Delhi	Sd.
Shri Ashok Aggarwal Advocate Social Jurist, 478-479, Lawyers’ Chambers Western Wing, Tis Hazari Courts, New Delhi – 110054	Sd.
Shri Om Srivastava Programme Coordinator Astha Sansthan 39, Kharol Colony Udaipur Rajasthan – 313004	Sd.
Smt. Jasodhara Bagchi Advisor, School of Women’s Studies, Jodhpur University 428, Jodhpur Park, Calcutta – 700068	Sd.
Dr. Amita Dhanda NALSAR University of Law, Hyderabad 3-4-761, Barkatpura, Hyderabad – 500027	Sd.

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Sd.

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Sd.

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Annexure - II

LEGAL AND CONSTITUTIONAL ISSUES

Deletion Amendment of Article 45

Concerns

In the Constitution (83rd Amendment) Bill, 1997, Article 45 has been deleted and the right to education been confined to the 6-14 years of age group.

Our queries are:

1. Does this not violate the constitutional promise made to all children from 0-14 years and to which they have become entitled by the Supreme Court's judgment in Unnikrishnan's case, 1993?
2. Does this amount to changing the basic structure of the Constitution?
3. Why has the amendment been proposed at all? The Unnikrishnan's judgment states that Part III and IV of the Constitution are to be read together. Further, it reiterates that the Directive Principles of State Policies are exactly that: if after 44 years of such a Directive, the said Directive has not been fulfilled, then the obligation has been converted into a Fundamental Right. Therefore, would not an Act rather an Amendment to the Constitution be more appropriate.
4. Is not a violation of CRC, which defines children upto 18 years of age and to which India is a signatory? In keeping with the contemporary reading of law the Supreme Court has held that International Conventions are to be integrated into existing provisions and not limited as in the Constitution 83rd Amendment Bill?
5. On what basis has Government decided on 6-14 years of age and not on 2-14 or 5-14 years of age etc. since educational theory has firmly recognized the vital importance of Early Childhood as the period where maximum brain growth takes place and the foundations of the capacity to learn are laid.
6. Why has there been such a narrow interpretation of Education in the Bill confining it to merely formal education rather than a development process that begins at birth? This interpretation undercuts the advances in science of child development, which recognizes ECCE firmly as part of education.

Background note on Art 45

The State's record in fulfillment /attrition of its obligation under Art. 45 and the proposed deletion of Art. 45 in the 83rd Constitution Amendment Bill

1. Origin of Article 45, (Part 4), Constitution of India

The Constitutional provision for free and compulsory education for all children up to 14 years originates in the Constituent Assembly debates. The Sub-committee on Fundamental Rights (under Advisory Committee for the Draft Constitution) proposed:

"Every citizen is entitled to have free primary education and it shall be legally incumbent on every unit of the union to introduce free and compulsory education up to the age of 14 years, and in case of adults, up to the standards of literacy. The duration, limits and methods of primary education shall be fixed by law."

In response to a member's observation that the Draft Constitution need not detail the number of years and duration of education, K.M. Munshi pointed out that what may be obvious to members of progressive, socialist views may not seem obvious to persons belonging to more traditional and fental backgrounds. He said,

"General precepts which might be considered less than necessary by an advanced thinker on socialist lines would not be looked at, much less understood or applied in some parts of the country where feudal notions were deeply ingrained."

It was clear from K.M. Munshi is comments that the Constitution framers defined primary education as up to 14 years and its duration to be determined by law, which should be **appropriate** for the **realization of Right to Education**.

On March, 27, 1947, the Sub-committee discussed various proposals: Some members felt that the Right to Education could not be a justiciable fundamental right. The majority opinion was that it should be included among justiciable rights with the understanding that the state shall provide free education to all children within a period of ten years. Accordingly, Articles (1) and (2) of Article VIII were finalized as follows:

"Every citizen is entitled to free primary education and it shall be incumbent on every unit of the Union to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory primary education for all children until they complete 14 years".

On April 16, 1947, The **Sub-committee on Fundamental Rights** submitted its final report wherein clause 23 stated:

"Every citizen is entitled as of right to free primary education and it shall be the duty of the State to provide within a period of ten years from the commencement of this Constitution for free and compulsory education for all children up to 14 years."

The clause appears as **Article 36 of the Draft Constitution**:

"Every citizen is entitled to free and compulsory education and the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution for free and compulsory education until they complete the age of 14 years"

During the debate, Mr Nizammuddin Ahmed contended that due to the resource crunch, the reference to the age of 14 years be reduced to ten years and commitment of the state be limited to primary education.

Dr Ambedkar refused to accept this amendment saying:

"I am not prepared to accept the amendment of my friend Mr Nizammuddin Ahmed. He seems to think that the objective of the rest of the clause in article 36 is restricted to free primary education. But that is not so. The clause, as it stands after amendment, is that every child shall be kept in an educational institution under training until the child is 14 years..... in Art. 14, which forms part of the fundamental rights, a provision is made to forbid any child being employed below the age of 14, obviously, if the child is not to be employed below the age of 14, the child must be kept in some educational institution."

The intention of Art 45 to ensure formal school education, particularly as a deterrent to child labour is quite clear. It is also pertinent to point out that the ten year commitment extends to **only two areas – right to education and reservation policy**. It was faith in education as a tool for social transformation that informed the 10-year limit to the reservation policy.

The specific mention of the steps required for concretization of this vision is missing – possibly because the framers of the Constitution were men from economically stronger groups, they could not see the hurdles in the path of poor children, particularly girls, in entering the educational stream and the crucial issue of Early Childhood Care and Education for such groups. However, the phrasing - **all children up to 14 years** provides an insight into their larger understanding of the educational issue and their social vision.

The final form of the Constitutional provision on free and compulsory education finally appears as Art. 45 of the Directive Principles of State Policy – not justiciable but nevertheless firmly indicating the clear direction the State is expected to take and within ten years:

Article 45

The state shall endeavour to provide within ten years of the commencement of the Constitution, for free and compulsory education for all children up to the age of 14 years.

2. Educational Policies from 1947-1965 – State response/ lack of response to Constitutional obligation under Art 45.

Little or no attempt was made by the State during '47-'65 to seriously address the Directive of the Constitution under Art. 45. The first Education Commission set up under Radhakrishnan, 1948-49, addressed the issue of standards of teaching and examinations in colleges and universities. The Mudaliar Commission, 1952, focused on secondary education. **It was not till 1964-66, that the Kothari Commission put its mind to the problem of achieving the goal of universal elementary education.** In the meantime, valuable years had been lost and the problems of providing education to all children up to 14 years had multiplied.

State of education –1947-65

New independent India had before it both the well-entrenched British system of education it inherited as well as the vision of the Nai Taleem – a unique product of the freedom struggle. State policy chose to divide the country by setting up two Boards of Education – one for Basic Education and one for the British system which had provided the pathway to professions and status. The poor recognized that the divide existed and the Basic Education Board was powerless. The middle classes were, during this period, using the massive government school system and the elite used the few and more expensive missionary schools. The poor, realizing the power of education, began to enter the government school system. However, by the 60s, an enabling State policy had encouraged private schools (ironically called public schools) to flourish by granting Registered Societies land at subsidized costs, access to government text books, government trained teachers and government examination systems. They were also permitted to charge fees. These schools began at pre-primary level (Montessori inspired) and were able to provide a head-start for their pupils. **There was a mass exodus to private schools by those who could afford it, leaving the government school system for the poor.** State policy also created a **caste system** within the government school system – Kendria Vidyalayas, Sainik Schools and Sarvodaya Vidyalayas (a system set up for government servants who were influential but in **non civil servant cadres**).

It is pertinent to state that no school can come into being without concomittant policy that provides permission, land, subsidy, teachers, curriculum, certification. The proliferation and the power and prestige of such schools cannot but be a direct result of **enabling public policy stated or unstated.** It is also pertinent to point out that all upper caste government schools like private (public) schools start at **pre-primary stage recognizing the importance of pre-primary education.** It is only the regular government school system to which the poor have access that starts at class one. When poor parents saw that

"While the achievements are impressive in themselves, the general formulations incorporated in the 1968 policy did not, however, get translated into a detailed strategy of implementation, accompanied by the assignment of specific responsibilities and financial and organizational support. As a result, problems of access, equality, quantity, utility and financial outlay accumulated over the years have now assumed such massive proportions that they must be tackled with utmost urgency."

"The nation as a whole will assume responsibility of providing resource support for implementing programmes of educational transformation, reducing disparities, universalization of elementary education, adult literacy....."

The 1986 policy was categorical on the educational requirements of early childhood care and education. There was a full section titled Early Childhood Care and Education which states:

"The National Policy on Education specially emphasizes investment in the development of the young child, particularly, children from sections of the population in which first generation learners predominate."

Recognizing the holistic nature of child development viz. nutrition, health, and social, emotional, mental, physical, moral and emotional development, Early Childhood Care and Development will receive high priority. Daycare services will be provided as a support service for universalization of primary education, to enable girls engaged in taking care of siblings to attend school and as a support service for working women belonging to poorer sections....A full integration of childcare and pre-primary education will be brought about both as a feeder and strengthening factor for primary education."

Some retrograde directions of the 1986 Policy vis a vis Art 45

The 1986 Policy, however, took some backward steps: it diluted the Constitutional promise of Art. 45 by introducing a non-formal system of education as well. The assumption was that government can't reach all children and prevent child labour and therefore, elementary education was bifurcated into primary and upper primary and a non-formal system of education. In the developments that followed, the Constitutional promise of eight years of schooling was whittled down to 3 years in a non-formal system for the poor which they could attend after working as labourers during the day. Mere literacy was to be passed off as education.

This Policy actually abetted child labour by offering classes before/after child labourers finish work. Dr Ambedkar's clear understanding of the importance of having the child in an educational institution in order to prevent his/her exploitation as labour was turned on its head. Dr Kothari's recommendation of Common School as a means to achieving equity was also laid aside by the state

Ramamurti Commission, 1990 - Review Committee's reaffirmation of Constitutional goals.

even after 3-4 years in school, their children could hardly read or write, they withdrew them in disgust. Non-enrolment of girls continued because of their **sibling care responsibilities**. Very little attempt as made by the state to address this problem. The **weakness** of State policy in following the Directive Principle under Art. 45 is quite clear from the above.

Kothari Commission 1964-66 – first policy document to address the goal of Universal Elementary Education

The Kothari Commission in its report – Education for National Development - viewed Education as a National priority. It identified ECCE as an integral part of Elementary Education and recommended allocation of 6% of the GNP for education. The Kothari Commission also recommended a common school system, stating:

"In a situation of the type we have in India, it is the responsibility of the educational system to bring the different social classes and groups together and thus promote an egalitarian and integrated society. But at present, instead of doing so, education itself is tending to increase social segregation and perpetuate and widen class distinctions.

At the primary stage, the free schools to which the masses send their children, are maintained by the government and local authorities and are generally of poor quality. Some of the private schools are definitely better but since many of them charge high fees, they are availed of only by the middle and higher classes.....

If these evils are to be eliminated and the educational system is to become a powerful instrument of national development in general, social and national integration in particular, we must move towards the goal of the Common School System of public education:

- which will be open to all children irrespective of caste, creed, community, religion, economic conditions or social status.
- where access to good education will depend not on wealth or class but on talent
- which will maintain adequate standards in all schools
- in which no tuition fees will be charged
- which would meet the needs of the average parent so that he would not ordinarily feel the need to send his children to expensive schools outside the system

The recommendations were passed by Parliament and incorporated into the next Five-Year Plan.

National Policy on Education, 1986 – Recognition of impact of State policies 1950-1986 and the resultant accumulated problems

The National Policy on Education, 1986, for the first time admitted the impact of earlier policies, stating:

The Ramamurti Commission took steps towards the goal of a humane and egalitarian society by providing a detailed framework and policy along with programmatic indicators and financial viability to realise Universalization of Elementary Education. It's recommendations centred around:

- A Common School System
- Elementary Education to be an integral whole including Early Childhood Care and Education
- Increased and adequate allocations within the national economy for education

State rejection of these recommendations

The Central Advisory Board of Education, while acknowledging the value of the Ramamurti Commission's recommendations, vetoed them by stating that they were not feasible, "that conditions were not right" for implementation of the recommendations.

The C.A.B.E. turned its back on the Constitutional obligation imposed by Art. 45. In its place, the National Literacy Mission was launched – **not a National Educational Mission** – and children were also allowed to sit in these classes.

Subsequent attrition in the State's commitment to Art.45 - 1990

In 1990, the then National Government signed the Jomtien Declaration committing to the time-bound goal of reaching primary education and Early Childhood Care and Education but ignoring the need to stick to the Constitutional obligation of Elementary Education, it sought a World Bank loan of 2000 crores to fund District Primary (not Elementary) Education. The eight years of Elementary Education obligation under Art 45 was collapsed into five years of Primary education. Privatization of Education was given a green light.

In 1993, the Supreme Court ruled that Education is a Fundamental Right for all children up to age of 14 years. In 1994, India ratified the Convention on the Rights of the Child which includes commitment to education up to the age of 18 years (including Early Childhood Care and Education). Both the CRC and the Supreme Court judgment reinforced the obligation under Art. 45. A brief review of the content of the Supreme Court judgment follows.

3. Unnikrishnan Judgment, 1993 – Unequivocal Decision on Education as a Fundamental Right.

In a landmark judgment, *Unnikrishnan J.P. and Others vs State of Andhra Pradesh and Others*, the Supreme Court left the nation in no doubt about its Constitutional obligations towards children:

"It is significant that among the several articles in Part-IV, only Art. 45 speaks of a time limit: no other Article does. It is not a mere pious wish and the State cannot flout the said

direction even after 44 years on the ground that the said article merely calls upon it to "endeavour to provide" the same and the further ground that the said article is not enforceable by virtue of the declaration in Article 37. The passage of 44 years, more than four times the period stipulated in Article 45 - has converted the obligation created by the Article into an enforceable right. At least now the state should honour the command of Article 45. It must be made a reality."

The decision is clear – the State must make universal elementary education of equitable quality available for all children up to 14 years.

The court has also given a broader meaning to the term Education:

Excerpts

"The fundamental purpose of education is the same at all times and at all places. It is to transfigure the human personality into a pattern of perfection through a synthetic process of development of the body, the enrichment of the mind, the sublimation emotions and the illumination of the spirit. Education is a preparation for living and for life, here and hereafter

"The Directive Principles form the fundamental feature and the social conscience of the Constitution, and the Constitution enjoins upon the State to implement these directives principles, the directives thus provide the policy, the guidelines and end of socio-economic freedom...there is no apparent inconsistency between directive principles contained in Part IV and the fundamental rights contained in Part III which in fact supplement each other. " (SSC p. 379, para 164).

Those rights (Fundamental Rights) are not ends in themselves but are the means to an end. The end is specified in Part IV.

"Article 21 has been interpreted by this Court to include the right to live with human dignity and all that goes along with it. The right to Education flows directly from the Right to Life... "The State is under Constitutional mandate to provide educational institutions at all levels for the benefit of all categories. The benefit of education cannot be confined to the richer classes."

" A true democracy is one where education is universal, where people understand what is good for them and the nation and how to govern themselves. The three Articles 45,46, and 41 are designed to achieve the said goal amongst others. It is in the light of these articles that the content and parameters of the right to education have been determined...

" The Constitution contemplated a crash programme being undertaken by the state to achieve the goal set out in Article 45. It is relevant to note that Art. 45 does not speak of the limits of it's economic capacity and development....

' Right to Education, understood in the context of Article 45 and 41 means that a) every child /citizen of this country has a right to free education until he completes the age of 14 years and b) after a child/citizen completes 14 years his right to education is circumscribed by the limits of the economic capacity of the State and its development.'

State response to the Supreme Court Judgment

The Government of India set up the Tapas Mazumdar Committee to work out the financial implications of the Unnikrishnan judgment and calculate the costs of educating all children. The Committee estimated that the State would need an additional expenditure of Rs 1,37,000/- crores over 10 years (i.e. 68,500/- expenditure in five years). The committee's Report had some basic flaws. They estimated the number of children as 6 crore whereas the NSS data estimates the out-of- school children as 12 crores. It also did not calculate the costs of ECCE which was clearly a part of the mandate under Art. 45 and the Supreme Court Judgment on it.

The Committee of Education Ministers popularly known as the Saikia Committee (1997) whittled even this amount down to 40,000 crores for five years. It is relevant to point out that the amount recommended by the Tapas Mazumdar Committee amounts to less than half per cent of GNP as against the 6 per cent of GNP recommended by the Kothari Commission in 1965 which would now be much higher due to the accumulated costs of 50 years of neglect. The Saikia Committee estimate thus grossly underestimated the task at hand of bringing the 12 crore children who are out of school into the school system as required by the Right to Education. It did not, of course, even take the costs of ECCE into its calculations.

The Saikia Committee also proposed to amend the Constitution.

4. The Constitution 83rd Amendment Bill and Proposed Deletion of Art. 45

The Right to Education Bill framed by the State and presented in Rajya Sabha in 1997, dangerously whittled down the Right to Education and severely limited State responsibility towards fulfilling the Constitutional mandate.

The main provisions of the Bill are as follows:

1. Deletion of Article 45
2. Making Education a Fundamental Right for all citizens 6-14 years of age
3. Making the provision of Educational opportunities a Fundamental Duty of parents
4. A financial clause is included providing for allocation of an additional 40,000 crores over 5 years for the purpose.

(See Annexure III : Copy of the Bill)

Public Response to the 83rd Amendment

The Bill was introduced in Parliament in 1998. It was opened up to limited circulation and debate. A large number of memoranda of opposition and concern were sent to the Ministry of HRD on the Bill being made public in October 1997. Representations were made to the Parliamentary Standing Committee communicating grave concern regarding the Bill. Such concerns have continued to be voiced from all over the country but the Ministry has not thought fit to communicate its views and responses. A total lack of transparency shrouds the government's stand on the Bill.

5. Some Major Areas of Concern re the 83rd Amendment Bill

Exclusion of Under-sixes from the Right to Education in the 83rd Constitutional Amendment Bill – Educational and social implications..

As indicated in the brief review above, State Policies in Education had led to gross inequality of access and opportunity for millions of children since Independence. These policies were now carried to their logical conclusion in the 83rd Amendment Bill by the proposed deletion of Art. 45, the restricting of the right to education to the 6-14 age group, and the compulsion on parents. The import of the deletion of Article 45 and the exclusion of the under sixes from the Right to Education needs to be understood fully both for its attrition and dilution of the Constitutional mandate and for the effect on the future of millions of children from poverty groups.

(See Annexure IV(a): Social and Educational Implications of Exclusion of Under-sixes from the Right to Education. IV(b) Coverage of 0-6 years under state programmes.)

Questions and Comments pertaining to the Specific Clauses of the Constitution 83rd Amendment Bill.

Major concerns center round the following:

1. Why has the commitment to free and compulsory education "up to 14" years been changed to 6-14 years?
2. What is meant by "free"?
3. Why has the term children been substituted by citizens?
4. What is meant by "compulsory"? Compulsion on whom?
5. Why should private institutions be left out of the scope of any law enacted for enforcement of free and compulsory education? Will this not amount to discrimination?
6. Why shouldn't better and stronger guidelines be delineated for states to make laws in consonance with the Fundamental Right to Education?
7. Why is Art. 45 being deleted?
8. Why should it be the fundamental duty of parents to provide opportunities for education when there aren't well functioning schools around them?

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7. Why is Art. 45 being deleted?
8. Why should it be the fundamental duty of parents to provide opportunities for education when there aren't well functioning schools around them?

9. Is the amount of 40,000 cr. for a period of 5 years sufficient to provide quality education to a hundred million out of school children, which includes drop-outs, never enrolled and working children?

See Annexure V for comments on the above concerns.

6. An Alternative to the 83rd Amendment Bill

An Alternative to the 83rd Amendment Bill is enclosed. The Alternative Bill is based on the document prepared by Prarambhik Shiksha Viapikaran Sanjha Manch Rajasthan, 1997 and has been modified thereafter in the light of the development of the issue of ECCE and its link with the goal of Universalization of Elementary Education during 1997-2001.

(See Annexure VI)

SOCIAL AND EDUCATIONAL IMPLICATIONS:

Exclusion of 0-6 years from Fundamental Right to Education

As you are aware, the proposed 83rd Constitutional Amendment Bill seeks to provide free and compulsory education to children from 6 to 14 years even though Article 45 from which it has been derived, promises free and compulsory education to *all* children upto the age of 14 years.

Amongst the various reasons discussed for this cutback in the Parliamentary Standing Committee Meetings and other forums, are the presumptions that EARLY CHILDCARE AND EDUCATION are the domain of the family, or that it has already been taken care of by the Department of Women and Child Development, or that it is too complex a task to be undertaken under the proposed act.

Consider the following facts:

1. EARLY CHILDHOOD CARE AND EDUCATION IS A FUNDAMENTAL RIGHT AS RULED BY THE SUPREME COURT IN 1993 DERIVED FROM ARTICLES 21 AND 45 OF THE CONSTITUTION OF INDIA.

THIS BILL DIRECTLY CONTRAVENES A DIRECTIVE PRINCIPLES. THE CONVENTION OF THE RIGHTS OF THE CHILDHOOD, AND A PREVIOUS SUPREME COURT JUDGMENT.

2. EARLY CHILDHOOD CARE AND EDUCATION IS A WELL ESTABLISHED COMPONENT OF EDUCATION which influences the most vital period of development of human beings, namely the first few years of life. It has immense repercussions on future life in terms of intelligence and personality. These effects have been quantified and seen to be related statistically to drop out rates, school retention and performance.
3. IN THE GIVEN SOCIO-ECONOMIC CIRCUMSTANCES OF THE MAJORITY OF THE FAMILIES OF OUR COUNTRY, ECCE CANNOT BE SEEN TO BE A FUNCTION THAT FAMILIES CAN PERFORM UNSUPPORTED BY THE STATE, as reinforced time and time again by various reports like the Shram Shakti Report and the Ramamurthy Commission Report. 90 million women work in unorganized sector. 93% of all working women belong to the unorganized sector. 60% million children under six are under the poverty line. About 80 million children are out of school and all of them either work for wages or as helpers for domestic work and sibling care since both parents work. 70% of children involved in childcare activities are girls and account for the vast majority of girls never enrolled in or dropped out of schools.

4. There are about 100 million children of age 0-6 years of which 60 million are below the poverty line. Only 18.6 million are within the outreach of the integrated Child Development Scheme. Virtually the only scheme designed to reach this age group.

THEREFORE TO SUGGEST THAT EARLY CHILDCARE AND EDUCATION ACTIVITIES ARE ALREADY TAKEN CARE OF BY THE MINISTRY OF HRD IS INCORRECT.

5. If this Bill be passed, it would ensure that **ONLY THOSE SECTIONS OF SOCIETY WHO CAN AFFORD PRIVATE PRE-SCHOOL WILL BE ABLE TO AVAIL OF ITS BENEFITS, WHICH AUTOMATICALLY RULES OUT ALL THE CHILDREN WHO NEED FREE EDUCATION.**
6. It is further short sighted to provide free schooling up to 14 years or class 8 when the first board certification is at 16 years or class ten. It is of note that most vocational training programmes and entry into a 'reserved' category require a minimum of schooling through the 10th class.
7. We have serious reservations on the financial clause, which is grossly inadequate even for schooling for 6 to 14 age group requiring a threefold increase. The project cost of **EARLY CHILDCARE AND EDUCATION** through comprehensive and integrated daycare lies at a minimum of 18.250 crores.

Concern re Definition of Education

EDUCATION IS NOT MERE SCHOOLING FROM 6-14 YEARS BUT A DEVELOPMENTAL ACTIVITY.

- Appropriate in content and process to the age, development stage and cultural context of the child;
- In diverse settings **not necessarily institutional** in nature in case of children below 6 years;
- Provided by appropriately qualified persons recognized for ECD as equivalent to elementary school teacher;
- Of a quality adequate to achieve the learning competencies essential for each stage of development;
- Able to harness and mobilize through requisite regulation/legislation and incentives, the full range of governmental and non-governmental initiatives available.

(The above definition has been modified from NCERT Consultation on ECE and Bill on Fundamental Rights to Education, March 25, 1998).

Annexure – V(b)

Coverage of 0-6 age group by State Programmes,

Allocations and Gaps, 2000-2001

Total number of children 0 - 6 years = 60 million
(poverty groups)

Total Number covered under ICDS = 26.85 million
(ICDS does not provide Daycare services)

ICDS Budget 850.56 crores

Total Number covered by Crèche Schemes = 3,75,000 children
for Working and Ailing Mothers Scheme
and the National Crèche Fund

(Because of very limited allocations, the programmes function more as Balwadis than Crèches, thus leaving the problem of caring for under - threes to older siblings.)

THE YAWING GAP BETWEEN NEED AND COVERAGE IS OBVIOUS FROM THE ABOVE.

Annexure - VI

Questions and Comments Pertaining to Specific Clauses of the Constitution (Eighty-Third) Amendment Bill, 1997.

I. Clause 21 A. 1)

i. Why has the commitment to free and compulsory education "up to 14 years" in the Article 45 been changed to "6-14"?

The Constitution of India, the Supreme Court judgment in the case of Unnikrishnan vs State of Andhra Pradesh (1993), the National Policy on Education (1968,1986,1992) and the UN Convention on the Rights of the Child, ratified by India in 1992, all talk about the child's right to education up to the age of 14 years and **not** 6-14 years of age.

Early Childcare and Education (ECCE) is a well understood component of Education. This is the stage at which the foundations of a child's personality and confidence are laid and maximum development of the brain takes place. "*The all-round balanced development of the child in the age group 0-6 year*" collectively described in NPE (1986) as Early Childhood Care and Education (ECCE) "*is an essential preparation for school*". The educational process forms a continuum from birth and has to be appropriate at each stage. 0-6 age group requires ECCE and the 6-14 age group requires formal schooling. Childhood must not be divided by legislation. ECCE is part of the Right to Education. "*ECCE is the birth right of every child,*" (Ramamurthy Commission).

The importance of ECCE in the Indian context of poverty cannot be stressed sufficiently. It addresses the rights of very young children, it frees girls from sibling care responsibilities and thereby, for schooling. It also empowers poor women and helps them to become economically viable. Education has also emerged as the only alternative to child labour and ECCE is the first rung in the process. (Non-formal schooling, as is being currently proposed, can in no way help to realize child rights and is an unfair substitute for formal education.

The exclusion of the under-sixes from the right to education must be seriously examined for its educational, social and constitutional implications

ii. What is meant by 'free'?

The term "free" should be defined clearly. It is public knowledge that for the so-called free education, poor parents are paying through their noses for books, stationary, uniforms etc. If the 50% poor children who are out of the school system, are to be brought into it, the term "free" should include fee-exemption as well as books, stationary, uniform, etc.

How does the State intend to make Education 'free', when privatization is the clarion call of the day? Privatization is geared towards profit-making as is evident from the mushrooming growth of "teaching shops" all over. "Privatization" and "Free Education" are contradictory notions.

iii. Why has the term "children" been substituted by "citizens"?

There is concern that this change of term opens the door to harassment of minorities, displaced persons etc.

iv. What is meant by the term "compulsory"?

Is the "Compulsion" to be on poor parents or on the state, which has failed to fulfill constitutional and political promises for fifty years?

It is recommended that the clause read as " the State shall provide free and universal education to all children up to 14 years through ECCE and the formal school system".

II. Clause 21 A (3)

Why should private institutions be left out of the scope of any law enacted for enforcement of free and compulsory education? Will this not amount to discrimination?

The unaided private (so-called public) school received hidden aid in the form of dirt cheap land, tax exemptions and trained teachers (who receive their B.Ed. degrees through a subsidized education system). Hence, it is wrong to call them unaided and leave them out of the scope of this Bill. This is also unconstitutional. Fundamental Right to Equal Opportunity for all is guaranteed by Article 14 of the Constitution of India. To be constitutionally valid, the Bill must be in consonance with Article 14. The only way to ensure right to equal opportunity to education for all is through the Common School System recommended by the Kothari Commission in the 1968. There should be provision for concrete steps to improve the quality of average schooling and to move towards the Common School System. Going ahead with this clause as it stands would mean perpetuating the inequalities present in the hierarchical system of schooling and of society.

Free and universal education has to be of a certain quality – which should include infrastructure (building, toilets, drinking water, furniture, etc.), books, uniforms, good teacher/ pupil ratio, a child-friendly approach, proper teacher training etc. - all necessary for greater retention of children in school.

The clause exempting private schools from the purview of the Bill needs to be deleted and greater clarity on the issue of quality must be included in the Bill.

III. 21 A (2) 1

Why shouldn't better and stronger guidelines be delineated for the States to make laws in consonance with the Fundamental Right to Education, which includes the concerns articulated above?

There are nineteen states in India (including Bihar, Haryana and Kerala) where laws on compulsory education exist on the statute books, but are hardly enforced, as, prior to 1976, Education was a state subject. A greater compulsion on the part of states is needed. If states may enforce the right to free and compulsory education "in such a manner as they may by law determine", existing cases (for example, PIL by Satyapal Delhi High Court, Civil Writ Petition, 3956, of 2000, based on Article 45, supported by Unnikrishnan judgment) coming up for hearing in the Supreme Court, will be held in abeyance pending state legislation and the cases will then be decided in accordance with the new laws. **Therefore, new laws must be such that they do not dilute or circumscribe what already exists.**

IV. Why is Article 45 being deleted?

Part IV of the Constitution spells out goals whereas Articles under Part III are **the means to the goal**. By placing Article 45 in Part III, goals are being circumscribed by means. Therefore Article 45 must feature in both Part III and Part IV of the Constitution. It is strongly recommended that Article 45 must be retained under Part IV of the Constitution as it is, omitting "within 10 years of the commencement of the Constitution".

v. ***Why should it be the fundamental duties of parents to provide opportunities for education when there aren't well functioning schools around them?***

The sub clause (k) should not be added to the 51 A of the Constitution. Several studies (e.g. Probe Report) have show that the majority of poor parents - urban and rural- would like their sons and daughters in schools provided there is a regular well-functioning school in the vicinity, which provides relevant and meaningful education, and, which is programmed according to local milieu and culture. The insertion of this sub-clause will lead to harassment of the poor and punishment to those who have been already punished through denial of their basic human right.

vi. ***Is the amount of forty thousand crores for a period of five years sufficient to provide quality education to hundred million out-of-school children, which includes drop-outs, never enrolled and working children?***

The Tapas Mazumdar Committee recommended the amount of 138,000 crores as additional expenditure over 10 years to bring 6 crore out-of-school children into

school at the current rate of spending of Rs 948/- per child per annum. (NSS data places the number of out-of school children as 12 cr.) The Saikia Committee not only whittled it down to 40,000 cr for (5 years) but also did not take fresh estimates of the actual number of children required to be covered.

Do we intend retaining the present abysmally poor quality of schooling? Is this the way towards retention and sustenance of education of children?

The Kothari Commission has recommended 6% of the GNP for education way back in the 60s. Even today, almost forty years down the line, only 3.8% of the GNP goes to education. What happens to the accumulative gap of about forty years? Costs have spiralled. Fresh estimates have to be made at current prices for all that had to be done in these lost decades. It is pertinent to keep in mind that GNP standards should also be revised and updated according to international standards.

Financial priorities will have to be realigned if the state is genuinely interested in Universalization of Elementary Education and it must include ECCE. The cost computed by Saikia Commission does not take into account basic factors like:

- Borewells so that girls are free to go to school
- Provision of crèches so that girls are released from sibling care duties
- Provision of wheel chairs and appliances so that children with Disability can access schools
- Provision of safety and security on the way to middle schools – a major reason why girls leave after class V.

- Provision of costs for an active prevention of Child Marriage Campaign - another factor affecting education of girl children

To build an arsenal of 350-400 nuclear weapons over a period of 30 years, the amount of 7,70,000 crores seems eminently affordable (Bharat Karnard as quoted by Prof. Krishna Kumar in The Times of India). Yet, for education there seems to be a "resource crunch".

"There is no way a country can become an economic giant if its population does not stand in line with rest of world in knowledge, information and skills The education budget should be considered as national defense budget" (Prof. Yashpal)

Annexure – VII

AN ALTERNATIVE BILL ON 83RD AMENDMENT TO THE CONSTITUTION

The Alternative Bill, prepared by the Prarambhik Shiksha Lok Viapikaran Sanjha Manch, Rajasthan in September, 1997 is presented below in a modified form in the light of the subsequent development (1997-2001) of the issue of ECCE and its link with UEE.

PREAMBLE TO THE ACT

Universalisation of Elementary Education

1. We welcome the step of the Union Government in proposing the 83rd Amendment to the Constitution that will ultimately make elementary education a fundamental right for every citizen upto the age of 14 years.
2. So far, the commitment towards elementary education for children was incorporated in Article 45 of Directive Principles of State Policy. But, in reality, 37 years after the stipulated period, this goal has proved elusive.
3. However, the Bill in its present form proposed by the MHRD on July 9, 1997, is not adequate to ensure universal elementary education to all citizens upto the age of 14 years.
4. (a) The proposed Bill fails to see education as an integrated process of life's development of individual and society.
(b) The proposed Bill fails to respond to the educational needs of the specific age group of children below the age of 6 years, which is the most crucial developmental stage of life. Earlier, this age group was included in Article 45.
(c) The proposed bill is woefully silent on the character and essence of the nature of education.
(d) The provision of 'compulsion' in the proposed bill would adversely affect the poor.
5. We believe that education is related to the totality of life processes. Hence, all the relevant Articles in the Indian Constitution such as Articles 24, 39, 41, 42 and 46 directly affect the education of the children of the poor and the oppressed.

6. Education should be an instrument of achieving equality, freedom and social justice. Hence, we strongly support an equitable common system of elementary education for all.
7. The term Education should be defined clearly. Education is not mere schooling from 6-14 yrs, but a developmental activity
 - appropriate in content and process to the age, development stage and cultural context of the child.
 - in diverse settings not necessarily institutional in nature, in case of children below 6 years.
 - provided by appropriately qualified persons recognized for ECD as equivalent to elementary school teacher.
 - of an adequate to achieve the learning competencies essential for each stage of development.
 - able to harness and mobilize, through requisite regulation / legislation and incentives, the full range of governmental and non governmental initiatives available.

(The above definition is modified from NCERT, Consultation on ECE and Bill on Fundamental Right to Education, March 25th, 1998)

8. Without an adequately democratized and decentralized educational mechanism involving the neighborhood community, it is not possible to provide equitable and qualitative universal elementary education.
9. We, thereby, strongly propose that the Bill for universalisation of elementary education should ensure:
 - (a) Free, equitable and qualitative elementary education including ECCE through the neighborhood common school, system which has been proposed in detail in the Kothari Commission Report.
 - (b) That poverty, geographical conditions and local circumstances should not be deterrents for equitable, qualitative and compulsory education.
 - (c) Adequate democratic and decentralized mechanism of community participation and control over the elementary education system.

We demand that the State demonstrates the necessary political will and administrative resolve; provide adequate financial and other resources for the country to achieve in reality, Universalisation of Elementary Education by the year 2005 A.D.

**THE CONSTITUTION (EIGHTY-THIRD AMENDMENT) BILL,
1997
A
BILL**

Further to amend the Constitution of India.

Be it enacted by Parliament in the Forty-eighth Year of the Republic of India as follow:

- (1) (1) This Act may be called the UNIVERSALISATION OF ELEMENTARY EDUCATION ACT.

By elementary education, we hereby understand ECCE upto age of 5 years and formal education upto the level of standard 8th.

(ECCE upto age five needs to include the universal availability of Maternity Entitlement, Crèches and nursery schools as necessary inputs into child development and to release girls from sibling care responsibility).

- (2) it shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

2. After Article 21 of the Constitution, the following Article shall be inserted, namely:-

21 A (1) The State shall provide free, compulsory, equitable and qualitative education to all citizens upto the age of 14 years, within 8 years from the date the Act comes into force.

21 A (2) The state direct its policy towards securing that children are given opportunity and facilities to develop in a healthy manner and in conditions of freedom and dignity, and that childhood and youth are protected against exploitation and against moral and material abandonment (Delete this section from Article 39F – Directive Principles of State Policies).

21 A (3) The right to free, compulsory, equitable and qualitative education referred to as 'common school' in Kothari Commission report, shall be enforced in such manner as the state may, by law, determine. Every state law shall follow all the guidelines given in the related schedule.

21 A (4) Even those educational institutions not maintained by the state or not receiving aid out of state funds will be governed by the same law.

21 B (1) No child below the age of 14 years shall be employed for cash or kind to work either at home or outside.

21 B (2) No child upto the age of 14 years shall ever be engaged in any hazardous work being done either at home or outside.

21 C (1) No child upto the age of 14 years shall be denied admission into any neighborhood educational institution run for elementary education.

3. Article 35 of the Constitution shall be renumbered as clause (1) of that article and after clause (1) so renumbered and before the Explanation, the following clause shall be inserted, namely:-

(2) The competent legislature shall make the law for the enforcement of right to free, compulsory, equitable and qualitative education referred to in clause (1) of article 21A within one year from the commencement of the Universalisation of Elementary Education Act.

Provided that a provision of any law relating to free compulsory education in force in a State immediately before the commencement of the Universalisation of Elementary Education Act, which is inconsistent with the provisions of Article 21 A, shall continue to be in force until amended or repealed by a competent legislature or another competent authority or until the expiration of one year from such commencement which ever is earlier.

4. Article 24, 39F & 45 of the Constitution shall be omitted.
5. A new article 51B shall be added to the Constitution viz fundamental duties of group of citizens (Neighborhood Communities):

It shall be the fundamental duty of the neighborhood community to ensure that all citizens upto the age of 14 years in the neighborhood attend elementary school.

SCHEDULE (Related to Guidelines for State Laws)

The state Law shall ensure the following:

2. That the elementary education of no child in the state may be adversely affected due to conditions of poverty.
3. That the elementary education system shall be geared to suit the variations of geographical and local conditions and situations of different areas such that quality of education is not compromised.
4. That the concept and practice of 'neighborhood common school' system, shall be effectively implemented.

5. That based on the principles of democratization and decentralization, the citizen groups (neighborhood community mechanism) shall be actively involved in planning, implementing and controlling elementary education.
6. That the elementary education system will specifically incorporate the local, region at and cultural milieu in form and content.
7. Meaningful relationship between education and creative labour.

PEC conducts Access Audit at BDA

for private circulation

The Proof Energy Centre in collaboration with the Office of the Commissioner for Persons with Disabilities conducted an access audit at the Bangalore Development Authority (BDA) on October 26, 2004, to determine whether the building is accessible to the disabled and if the facilities are disabled friendly.

The PEC team first met the Secretary, BDA, Mr. G.H.Puttahalagaiya who listened to the views of the team and assured them that all recommendations to make BDA disabled friendly will be adopted and implemented. He further said that in three months the BDA will be computerised and information will be available on the website. This should help the disabled to access information without hassle.

Mr. Peeryanaik the executive engineer, BDA, assisted the team in the audit. The PEC team made the following observations:

1.Ramps: Ramps with railings are present at all entrances, the main gate, and the parking areas and at the commissioner's office (D block). Ramps are also present from the ground floor to the first floor in all buildings except one. However, it was observed that the distance from the parking to the ramps is long making it difficult for the disabled to walk up to the ramps.

Recommendations:

- Disabled people should be allowed to drive their vehicles right up to the ramp so as to facilitate easy movement.
- Ramp to be built in the new building from ground floor to first floor as steps are not accessible by people in the wheel chair and other disabled.

2.Lifts: There are two lifts in the BDA, one in the old building and another in the new building. Though the lift in the old building is in working condition, it is not disabled friendly. The entrance of the lift is not wide enough to enable wheelchairs to get in. Also, it was found that the lift would close-in on the person before they could come out. The lift in the new building is not working, making it difficult for the disabled to climb to the first floor.

Recommendations:

- Lifts should have doors that are automatic and close only when there is no person entering or coming out.
- The lift operating buttons should be at a height that will enable the disabled to access it themselves.
- The lifts should have voice system so that visually challenged can also access it independently.



A person with disabilities trying out the ramp at the BDA Office.

3. Toilets:

There are two toilets for ladies and two for gents in each floor. But none of them are disabled friendly. The toilets for ladies are both Indian in style making it extremely difficult for the disabled to use them. The spaces inside the toilets are not enough for wheelchair movement, and the toilets were situated at a raised platform making it further inaccessible to the disabled.

Recommendations:

- One toilet in each floor needs to be of western style for the disabled to access them.
- The elevation to the toilets needs to be removed as it hampers the movement of wheelchair.
- There must be enough space between the walls and the commode to enable persons in wheelchair to turn and hoist themselves from the wheelchair to the commode.
- There must be railings from the entrance of the toilets to the commode to enable people with crutches and visually challenged to walk easily.

Future plans: The executive engineer informed that the PRO will be situated in the ground floor where all facilities for the disabled such as seating, ramps, toilets and information in Braille will be provided. He also said that disabled people employed will be placed on the ground floor.

The PEC team recommended that officials should attend to the disabled people at the PR Office even if; the departments are located on the other floors.

Jayanthi Noronha, Coordinator, Proof Energy Centre

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Q & A

What is the PROOF Energy Centre?

The Proof Energy Centre (PEC) is a committed group of individuals from across Bangalore who meet regularly at Voices (an NGO) to discuss issues related to local governance and voice concerns of citizens of Bangalore. The PEC's activities are supported by Voices.

The PEC was born out of the PROOF campaign which seeks to bring about transparency and accountability in the financial operations of the city government. Today the PEC has extended its mandate to concern itself with issues such as disability, slums and senior citizens. It envisages going even further in future.

Who are the PEC co-ordinators?

The PEC members listed below are taking responsibility for special activities in community communications - they may need your help! If you would like to know more about their particular area of interest - or to help in any way - please call them or e-mail them directly.

H.S. Srikantha, Mini-discussion series
t: 26585104

S.N. Shiva Shankar, College activities
t: 26507225

C. K. Shantha Building Bridges
t: 26567119

Rajeev Yeshwanth, Talk About Proof
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t: 26588132, e: mrrao@lycos.com

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t: 25280311 / 26644245

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Our Right to Information

A comparison of RTI legislation across the country shows that KRIA is a relatively progressive legislation. The real test however lies in the implementation of KRIA. With the realisation that unless KRIA genuinely serves the information needs of the people it would amount to nothing. Public Affairs Centre (PAC), Bangalore and Commonwealth Human Rights Initiative (CHRI), New Delhi, embarked on a joint effort of to conduct the 'Implementation Audit' of KRIA in November 2002.

The idea behind the effort was to assess the implementation of KRIA in Bangalore, and in doing so, generate valuable citizen feedback/ recommendations that would be relayed to the government in order to improve systems for effective implementation. With these objectives in mind, PAC and CHRI brought together concerned citizens, orienting them on KRIA and the various procedures involved in seeking information. In securing their participation in creating a demand for information, PAC and CHRI were able to galvanise civil society groups into actively testing the efficacy of KRIA in Bangalore City.

The Implementation Audit began with the training of volunteers, who then identified their information needs and the public authorities they wished to

approach for information. Care was taken to file the applications according to the procedure stipulated in KRIA, as this would enable accurate assessment of the operational efficacy of the law. This study is a reflection of the experiences of ordinary citizens in their attempt at trying to use KRIA in Bangalore.

Twenty public authorities were approached and 100 applications were submitted between the period November 2002 and April 2003. The response of the public authorities has been varied - some have been proactive and others have been non-responsive. The agency factsheets that follow provide a complete picture of these public authorities in the context of implementing KRIA.

PAC and CHRI would like to thank the volunteers for their contribution, and the time and effort spent by them to make this "Implementation Audit" of KRIA possible. We hope these findings provide the necessary feedback to various public authorities in order to enable them to put in place systems to effectively implement the Karnataka Right to Information Act, 2000 which is acknowledged to be one of the progressive laws on the topic in the Country.

.....Continued in next issue

Access Audit at Nirmala Toilets in South Bangalore

1. At the junction of 40th cross and Kanakapura Road, 8th block, Jayanagar.

The sulabha shouchalaya was constructed by the Karnataka Land Army for the BMP. The shouchalaya caters to both men and women. However, it is not user-friendly to the disabled citizens for the following reasons:

- (a) The construction is on a very busy area where the traffic both on Kanakapura Road as well as on 40th Cross is extremely high. It is very difficult to cross the road at any given time for normal citizens. It is highly impossible for the physically handicapped persons to use tricycles or otherwise to commute on the road.
- (b) The approach to the entrance is on the 40th crossroad. 'No Parking' sign is right in front of the toilet. However, it is usually occupied by autos and other vehicles
- (c) Entrance to the toilet is through steep steps 4 nos, each is around 8"(inches) high. Sides to the toilet are rather narrow, in width.
- (d) There is absolutely no chance for any ramp to be provided at this stage of construction since there is hardly any space for such a provision.
- (e) No. of persons using the toilet is also not high
- (f) A ramp, even of 3 feet wide, cannot be now incorporated at any point in the toilet.
- (g) The toilet is well maintained.

2. Toilet at the park on 10th main, 5th Block, Jayanagar(near Adiga's restaurant)

This toilet again constructed by the Karnataka Land Army for BMP is not user-friendly to physically handicapped/disabled persons for the following reasons-

- (a) This is constructed on a busy main road, very close to the park. However, ordinary citizens who visit the park use this extensively.

- b) Entrance to the toilet is by five steps, the first step is quite steep, about 10" high. The other four are each more than 6" high.
- (c) Steps leading to the toilet are quite narrow(both in width and depth)
- (d) On both sides of the steps, instead of open space, flower plants have been planted.
- (e) There is absolutely no scope for construction of a ramp for use by the physically handicapped.
- (f) The steps are made of smooth stone slabs, leading to slippery surface

Recommendations for both /any new construction

Since the BMP has issued guidelines and instructions for construction of buildings through building byelaws, which are mandatory, any future construction of the toilets should also be governed by the same building byelaws. Then alone can these toilets be used by all sections of the citizenry of the metropolis.

3. Ramananjaneya & Kohinoor Grounds Toilet.

The Nirmal toilet at Kohinoor grounds in hyvadana rao road is not yet commissioned. One side a ramp can be constructed at a low cost. The doors, one is 2 and a half" wide where wheel chairs can enter with difficulty. The toilets are with Indian closets which is not convenient for the physically challenged. One of the toilets can be renovated to suit the handicapped people. The entrance platform is 3" wide, the wheel chair can be taken over. The toilet at Niraguna Road, at the foot of the hill is also not commissioned. The feature of this toilet is same as the Hyavadana Rao road toilet.

Write away !

Would you like to write here about your viewpoint on issues surrounding governance, transparency and accountability? Send your article in not less than 650 words to the address or e-mail on the back of this newsletter.

Q & a your questions answered

ME10-9.

Voices-Nimma Dhwanigidhe Shakthi on Tuesday the 12th October 2004 featured Mr.Anand Rao, a PEC member due to the non-availability of the scheduled guest Mr.Rame Gowda, Engineering Chief, BMP. Mr.Anand Rao answered queries related to the activities of the Proof Energy Centre in its new avatar as a "Citizens Information and Communication Centre." Many listeners called in to know more about the PEC.

Q Mr.Shivaji from M.S.Ramaiahnagar complained about improper drainage, construction in drains and indifference of officials of ward inspite of repeated requests. He also complained about potholes on the road causing problems for the residents of the area.

a Mr.Rao requested Mr.Shivaji to bring the above to the notice of BMP, Chief Engineer, through a collectively signed letter on behalf of residents of the area, marking a copy of the said letter to the PEC for follow-up. Mr.Rao said that if BMP does not act or does not give satisfactory reply, the residents can approach the Lokayukta for necessary action. (Lokayukta has an office at the BMP premises).

Q Mr.Chandrappa from Austin Town complained about the Land use conversion from residential to commercial inspite of objections by residents of the area.

a Mr.Rao requested Mr.Chandrappa to write to PEC with details so that the same can be taken up as a citizen's query with concerned officials of BDA and BMP.

Q Mr.Shamarao of Ramamurthynagar gave three suggestions to be implemented by BMP for better administration and effectiveness.

a In each of the 100 wards, 5 active residents' representatives should interact with the ward office and corporator to identify problems and solve them through follow-up.

Q Mr.Rajanna from Shanthinagar wondered by BMP which is so much concerned about high-tech city problems relating to infrastructure and concentrating on few roads, is not bothered to set right the bad condition of road near the bus stop(mission road) and the bad smell in the area. He wanted BMP to act swiftly to make it a presentable spot.

a Mr.Rao agreed with the observation and said that inspite of two new bus shelters built, passengers still crowd near the BMP office gate and the road is in bad shape (including footpaths). The matter will be brought to the notice of BMP commissioner and Mayor. Mr.Rao said.

Q A security firm member (ward no.97) on R.T.Nagar Main Road complained about dumping of garbage regularly near ING Vysya Bank and not clearing the garbage for days together. He said the helpline of BMP for garbage clearance does not function most of the time.

a Mr.Rao said that the same would be brought to the notice of BMP health officer for taking necessary action. Mr.Rao wanted the caller to ring up VOICES-Proof Energy Centre office once the work was done.

Reported by Anand Rao, Coordinator, VNDS

? Do you have a question to ask PROOF? Please send any question about the campaign to us at the address or e-mail printed at the bottom of this page.

- Want a copy of the first, second, third or fourth quarterly report with PROOF analysis?
- Want to know the latest development in the PROOF campaign?
- Want to know more about the PROOF partners and how you can get involved in some of their other activities?

For answers to all of these questions contact us NOW!

How to contact PROOF at VOICES

write: PROOF, 165, First Floor, 9th Cross, 1st Stage, Indiranagar, Bangalore - 560 038

tel: 91-80-25213902/03 / fax: 91-80-25213901

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TAP coordinator:- Rajeev Yeshwanth.

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