

1990

Child Welfare Legislation in India: Will Indian Children Benefit from the United Nations Convention on the Rights of the Child

Shahana Dasgupta
Delhi University

Follow this and additional works at: <https://repository.law.umich.edu/mjil>



Part of the [Comparative and Foreign Law Commons](#), [International Law Commons](#), [Juvenile Law Commons](#), and the [Legislation Commons](#)

Recommended Citation

Shahana Dasgupta, *Child Welfare Legislation in India: Will Indian Children Benefit from the United Nations Convention on the Rights of the Child*, 11 MICH. J. INT'L L. 1301 (1990).

Available at: <https://repository.law.umich.edu/mjil/vol11/iss4/9>

This Article is brought to you for free and open access by the Michigan Journal of International Law at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Journal of International Law by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

CHILD WELFARE LEGISLATION IN INDIA: WILL INDIAN CHILDREN BENEFIT FROM THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

*Shahana Dasgupta**

I. A BRIEF BACKGROUND OF THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

The United Nations Convention on the Rights of the Child was passed by the General Assembly on November 20, 1989.¹ Awareness of the fact that children have certain rights and of the need to formulate them in an international instrument has existed since the beginning of this century. The moving spirit behind the first attempts to draw attention to the needs of children and put them in the form of an international document was Eglantyne Jebb. Her five point draft, known as The Declaration of Geneva, was adopted by the League of Nations in 1924.² An expanded version of it later became the Declaration of the Rights of the Child, which was adopted by the General Assembly in 1959.³ The United Nations declared 1979 as the International Year of the Child (IYC), and it was on this occasion that the Polish authorities put forward their proposal for a Convention on the Rights of the Child.⁴

The subject of children's rights has been dealt with both directly and indirectly in a number of international legal instruments over the years. Initially, there were differences concerning the need for a Convention over and above the already existing legislation. Some countries felt that children should not be treated as a category set apart

* LL.B., Faculty of Law, Delhi University; LL.M., University of Michigan Law School.

1. *Convention on the Rights of the Child*, 44 GAOR Supp. (No. 25), U.N. Doc. N/Res/44/25 (1989); reprinted in 28 I.L.M. 1448 (1989); see also *Report of the Third Committee: Adoption of a Convention on the Rights of the Child*, U.N. Doc. A/44/736 (1989).

2. *Geneva Declaration of the Rights of the Child*, LEAGUE OF NATIONS O.J. Spec. Supp. 21 at 43 (1924); see also Cohen, *Convention of the Rights of the Child: Introductory Note*, 28 I.L.M. 1448 (1989); GOVERNMENT OF INDIA, SOCIAL LEGISLATION — ITS ROLE IN SOCIAL WELFARE 365 (1956).

3. *Declaration of the Rights of the Child*, G.A. Res. 1386(XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959).

4. UNICEF REGIONAL OFFICE FOR SOUTH CENTRAL ASIA, TOWARDS A UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD at 12, U.N. Doc. IND/88/PLG/033 (1988); see Cohen, *supra* note 2, at 1448.

from other human beings and thereby be the object of a separate legal document. On the other hand, countries in favor of a Convention wanted to create a single legal instrument which would take into account children's requirements on a universal scale. They also saw the need to fill gaps in existing international legislation by taking notice of the fact that children's needs required higher standards than those applicable to adults. These countries also felt that it was important to have legislation which was binding and enforceable. The drafting process which initially began very slowly was considerably hastened as the decade drew to a close. The draft convention was then hurriedly put before the General Assembly, so that the Convention could be adopted in time for the thirtieth anniversary of the 1959 Declaration and the tenth anniversary of IYC. The Convention has now been adopted and will enter into force once twenty States have ratified or acceded to it. It stands as a good example of political cooperation between nations and projects the unity of views on certain matters.

II. ISSUES OF CONCERN TO INDIAN CHILDREN

Children form a large percentage of the total population of India. The 1971 census showed that 42% of the population was made up of children below the age of fourteen years. The figure had, however, come down to 38.6% by the end of the seventies and is expected to decline further in the nineties.⁵ These statistics show that in a country like India, with one of the world's largest populations of children, child care and protection should form an important part of the State's responsibilities. This becomes all the more relevant when figures show that about 81% of Indian children live in the rural areas, where already inadequate facilities are even more scarce.⁶ About two-fifths of India's children live in conditions of extreme poverty and need.⁷ The problems facing Indian children can best be described in the words of one of the country's leading social workers: "Delinquency, drug addiction and broken homes are positively not the problems of children in India. Ours has largely been one of poverty, poor health, child mortality, bad nutrition, over-population at the poorest level and lack of training and education to earn a living gainfully."⁸ These were the main areas of concern for child welfare legislation at the time of In-

5. UNICEF, ANALYSIS OF THE SITUATION OF CHILDREN IN INDIA (DRAFT REPORT) (1981).

6. *Document: The Child in India*, in ADMINISTRATION FOR CHILD WELFARE 364 (T.N. Chaturvedi ed. 1971).

7. *Id.*

8. T.A. BAIG, OUR CHILDREN 40 (1979).

dia's independence more than four decades ago, and they still remain the major sources of concern today.

In much of Indian legislation the child is addressed in a number of provisions which form part of the general law on the subject. In some cases the legal instruments have been totally geared to protecting children's rights in a particular area, such as usage of child labor in industries as in the Employment of Children Act, 1938.⁹ However, India does not have any statute which encompasses within its articles all the duties which the State and society owe to children.

In 1974, well before the IYC, the Government of India decided to sketch out a national policy for children.¹⁰ In this document the State clearly recognized the fact that children were the mainstay of the country's future. The document also stated that one way in which to ensure greater social justice would be to see that equal opportunities were given to all children during their period of growth. To this effect, the document provided that "[i]t shall be the policy of the state to provide adequate services to children, both before and after birth and through the period of growth, to ensure their full physical, mental and social development. The state shall progressively increase the scope of such services so that, within a reasonable time, all children in the country enjoy optimum conditions for their balanced growth."¹¹ This was followed by fifteen points which spelled out the State's duties towards children, especially those coming from the weaker sections of society. The points covered areas such as health, education, prevention of child labor, and special assistance to physically handicapped and delinquent children. The document then went on to announce the setting up of a forum to be called "The National Children's Board," which would plan, review and coordinate the various projects to be set up by the State. It also stressed the importance of voluntary organizations in child welfare programs and sought to encourage their work as well as further cooperation between them and the State. The State also saw the need to provide adequate legislative and administrative support, as well as encourage the participation of the general population, in order to secure the successful implementation of the goals set in the policy document. The National Policy for Children, although not a statute and hence not legally enforceable, brought into focus the needs of Indian children.

India was one of the countries which participated in the drafting

9. The Employment of Children Act, 1938, 16 A.I.R. MANUAL 562 (4th ed. 1979).

10. *Document: National Policy for Children*, in ADMINISTRATION FOR CHILD WELFARE, *supra* note 6, at 361.

11. *Id.*

process of the Convention and which has supported its rapid adoption by the international community.¹² Therefore, it may not come as a complete surprise if India makes a binding commitment to the Convention. It seems to be a fairly widespread opinion in developed countries that the Convention, in reality, does not apply to children in those countries. Rather, it is meant to serve as a mantle of protection for the "oppressed children" of the Third World. This view was expressed by the Minister of Justice of the Federal Republic of Germany, who also added that children in the FRG were in any case fully protected by the Basic Law of that country, as well as innumerable other related legislation.¹³ So, does the Convention help the Indian child any more than existing national legislation? Does the beneficiary of this Convention have any means of ensuring that he receives that which has already been promised to him? In order to answer these questions, it would perhaps be worthwhile to take a look at India's own attempts to take care of its children.

III. INDIAN LEGISLATION ON CHILD WELFARE

A. *The Indian Constitution*

The Constitution of India which came into force in 1950¹⁴ has a number of articles dealing with the duty of the State towards the child. Article 15(3) provides that the State can make special provisions for women and children. Article 24 forbids the employment of children below the age of fourteen in any factory or mine or other hazardous job. Article 39(e) provides that children shall not be abused and that they shall not be forced by economic necessity to undertake tasks unsuited to their age or physical capacity. Article 39(f) states that children should be given the opportunity 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."¹⁵ Article 45 provides for free and compulsory education for all children up to the age of fourteen years and says that the State shall try to make this possible for all children within ten years of the commencement of the Constitution. It is therefore evident that the Constitution, which forms the foundation on which India's legal system is based, recognizes children as a special entity. The Constitution also takes into account the fact that children are a particu-

12. UNICEF REGIONAL OFFICE FOR SOUTH CENTRAL ASIA, *supra* note 4, at 8.

13. Piotrowski, *Opfer des Erwachsenen*, *Der Tagesspiegel*, Nov. 19, 1989, at 1.

14. 7 INDIA A.I.R. MANUAL 532 (4th ed. 1979).

15. INDIA CONST. § 39(e); 8 INDIA A.I.R. MANUAL 315 (4th ed. 1979).

larly vulnerable section of the population and therefore need special protection.

B. Child Labor

One of the most important areas of concern for Indian legislators, social workers and all those involved with children's rights is the complete, or at least partial, elimination of child labor. There are no precise statistics available on the number of children actually working in India in both the organized and unorganized sectors of the economy. The 1981 census put the figure at around 14.5 million children, though in other surveys the figure has fluctuated between 17.6 million and 100 million children.¹⁶ According to the International Labor Organization (ILO), about one-third of the world's population of working children are to be found in India.¹⁷ In fact, there is no disagreement on the point that India has the largest number of child workers in the world. Both ILO and Indian data show that the vast majority of working children come from the rural areas where they work on the land or in small-scale industries. A lesser percentage of them work in larger industries, or in jobs which are of a hazardous nature, such as those connected with carpet weaving, manufacture of glass, mica cutting and production of matches and explosives.¹⁸

The State has tried to prevent child labor through legislation both at the central and state level. Apart from Articles 24 and 39 of the Indian Constitution, there are a number of statutes on the subject including:¹⁹ the Employment of Children Act, 1938;²⁰ the Factories Act, 1948;²¹ the Plantations Labour Act, 1951;²² Mines Act, 1952;²³ Indian Merchant Shipping Act, 1958;²⁴ Apprentices Act, 1961;²⁵

16. Khan, *Child Labour: Causes and Remedy*, Yojana (Delhi), Dec. 16-31, 1988, at 12; see also Burra, *Child Labor and Model Law*, MAINSTREAM (Delhi), Feb. 15, 1986, at 20.

17. Khan, *supra* note 16, at 12.

18. *Document: The Child in India*, *supra* note 6, at 369, 373.

19. See Jain, *Laws Relating to Child Labour*, in CHILD AND THE LAW 10-18 (S.N. Jain ed. 1979) [hereinafter Jain, *Laws Relating to Child Labour*]; Jain, *Law and the Child in India*, in ADMINISTRATION FOR CHILD WELFARE, *supra* note 6, at 81 [hereinafter Jain, *Law and the Child in India*].

20. The Employment of Children Act, 1938, *supra* note 9.

21. The Factories Act, 1948, §§ 23, 27, 67-77, 18 INDIA A.I.R. MANUAL 789-90, 791, 816-20 (4th ed. 1979).

22. The Plantation Labour Act, 1951, §§ 24-28, 29 INDIA A.I.R. MANUAL 91-92 (4th ed. 1979).

23. The Mines Act, 1952, §§ 40-45, 25 INDIA A.I.R. MANUAL 648-49 (4th ed. 1979).

24. The Merchant Shipping Act, 1958, §§ 109-13, 25 INDIA A.I.R. MANUAL 421-22 (4th ed. 1979).

25. The Apprentices Act, 1961, § 3, 1 INDIA A.I.R. MANUAL 473-74 (4th ed. 1979).

Child Labor Act, 1986.²⁶ The aim of such legislation has been to establish: a) minimum age of employment of children; b) medical examination of children; and c) prohibition of night work by children. However, the minimum age of employment varies from statute to statute, as do hours of work, the requirements for medical examination and the definition of "night work."²⁷ It is important to note, especially in view of the very large number of working children, that only those who work in factories and other organized sectors of the economy come under the scope of these laws. Children employed in the agricultural sector are not covered by it, nor are children working in factories employing less than a certain number of people, or those working in the transport or construction industries.

The National Policy for Children declared that the State would seek to protect children against "neglect, cruelty and exploitation" and that no child under fourteen years of age would be permitted to work in a "hazardous occupation or be made to undertake heavy work."²⁸ A few years later, in 1987, the State came up with a child labor policy to complement the existing legislation on the subject. The plan was based on the premise that child labor could not be wiped out within a short period and would exist as long as poverty forced children of poorer families to earn a living. It proposed tightening up labor laws, setting up welfare programs for working children and their families and withdrawing and rehabilitating children working in hazardous industries.²⁹ However, both the Child Labour Policy of 1987 and the Child Labour Act, 1986, have come under heavy criticism. While the Child Labour Act prohibits the employment of children in certain hazardous industries, these provisions do not apply to work of the same nature when carried on as a family undertaking or cottage industry. The Act has also been criticized for failing to impose a total ban on employment of children, rather than drawing a distinction between employment in hazardous and non-hazardous industries. Critics of the State's Child Labour Policy have said that it amounts to an acknowledgement of defeat on the part of the Government as far as its policies on eradication of poverty and child labor are concerned. They say that the various projects envisaged under the Policy, such as non-formal education for working children, can only help to "legalize . . .

26. The Child Labour Act, 1986, 74 INDIA A.I.R. MANUAL 59 (1987).

27. For a comparison of the various requirements of the relevant statutes, see Jain, *Laws Relating to Child Labour*, *supra* note 19, at 10-18.

28. *Document: National Policy for Children*, *supra* note 10, at 362.

29. Indian Express, May 12, 1988, at 8; Grover, *Legalizing Child Exploitation*, THE LAWYER (Bombay), July 1986, at 18-19.

the presence of children in factories."³⁰

The existence of child labor in India is a hotly disputed topic. On the one hand, a large section of the population believes that child labor is an evil which arises out of certain economic and social conditions and results in the exploitation of the child. Working children also have no access to any kind of education, training or health care facilities. Besides the damage caused to children, child labor has been held to be the cause of unemployment and low wages among adult workers.³¹ On the other hand, there is also a section of the population which feels that child labor has two aspects. One, exploitation, is to be condemned. However, the other, which enables the child to learn discipline, responsibility and the ability to do unpleasant work, is the more positive aspect. This group of people also believes that keeping children occupied has been one of the reasons for relatively low juvenile delinquency rates in India.³²

C. *Education*

Education for all children has been a goal of the State since India's independence. Unlike the other needs of children which have been given a somewhat low priority, education has been recognized from the very outset as a major duty of Indian society towards its children. The Indian Constitution in Article 45 laid out that the State would endeavor to provide free and compulsory education for all children up to the age of fourteen years. This target was to have been reached within a decade after the Constitution went into force. Although over four decades have since passed, there has not been much progress in this area.

In the meantime, several states of the Indian union have passed legislation putting into practice Article 45 of the Constitution. Though the various state acts differ in detail, such as the level of free education which the state should provide, there are certain common features to be found in the statutes.³³ The acts require local authorities to submit primary education schemes to the state government. Local authorities are also required to prepare a list of children in a given area and to appoint attendance authorities to supervise implementation of the provisions of the Acts. The statutes recognize certain

30. Hindu (Madras), Aug. 23, 1988, at 8.

31. UNICEF, *supra* note 5, at 52.

32. T.A. BAIG, *supra* note 8, at 69; see also Baig, *What Have We Done with Our Children?* MAINSTREAM (Delhi), June 23, 1984, at 31.

33. For a discussion of the state compulsory primary education legislation, see Jacob & Kumar, *Child Welfare*, in CHILD AND THE LAW 66-71 (S.N. Jain ed. 1979).

situations under which children are exempted from attending school, such as when the child is receiving instruction in some other satisfactory manner or the attendance authorities certify that compelling circumstances prevent the child from attending school.³⁴ Apart from the exceptions mentioned in the Acts, a parent is obligated to send his children to primary school, and failure to do so results in the imposition of a fine. The fine is a nominal one, but for a poor family it is still quite a substantial amount. It should be added that those who employ children and thereby prevent them from attending school also face having to pay a fine. However, in practice these penal clauses are rarely enforced.³⁵

The lack of success in the field of child education can be attributed to a number of factors. Although there has been a considerable increase in the availability of educational facilities, it has mostly benefited the urban areas.³⁶ Despite figures showing that about 80% of rural areas have a primary school and about 60% a middle school, approximately 48,566 villages do not have any schools.³⁷ In addition, enrollment in existing schools has not been up to expectation. Low enrollment figures are partly linked to poverty which, as has been shown, forces children of poorer families to start working at an early age and thus forfeit any form of schooling. This lack of elementary schooling and acquisition of vocational skills, in turn, results in the vicious cycle of poverty and low wages. Studies have shown that because many children found school uninteresting, there was a need for vocational training.³⁸ A majority of parents wanted their children to be educated, at least up to the primary level, but at the same time felt that their children should learn some trade before they reached the age of fifteen.³⁹ An interesting fact that emerged from the survey was that most children from the poorer segments of society were in favor of non-formal education and of combining it with their work schedule. However, part of the problem of getting children to go to school seems to be the result of the typically Indian tradition of children joining the family trade. For this group, usually children of craftsmen, artisans and farmers, training received at home is far more valuable than that which any school or vocational institution can offer.⁴⁰

34. *Id.* at 68-69.

35. *Id.* at 69-70.

36. Chaudhari, *Women and Innovative Science and Technology*, MAINSTREAM (Delhi), Jan. 12, 1985, at 25.

37. *Document: The Child in India*, *supra* note 6, at 367.

38. UNICEF, *supra* note 5, at 52.

39. *Id.* at 51.

40. T.A. BAIG, *supra* note 8, at 104-05.

The National Policy for Children, while still emphasizing the State's aim of providing free and compulsory education to all children below fourteen years of age, has tried to bring informal education into the picture. The document states that children who are not able to take full advantage of formal school education shall be provided with other forms of education suited to their needs.⁴¹ Instead of trying to keep children in school, this focus on the achievement of universal literacy and acquisition of vocational skills is perhaps a realistic answer to India's problems in this area. To quote Mahatma Gandhi:

Whatever may be true of other countries, in India at any rate where more than eighty percent of the population is agricultural and another ten percent industrial, it is a crime to make education merely literary and to unfit boys and girls for manual work in after life I am a firm believer in the principle of free and compulsory education for India. I also hold that we shall realize this only by teaching children a useful vocation, and utilizing it as a means for cultivating their mental, physical, and spiritual faculties.⁴²

D. Health

Another major duty which the Indian state and society owes to its children is proper health care. Once again, available statistics are not entirely reliable, but estimates show that about 55% of children in rural areas and 45% in urban areas are in need of health services.⁴³ As with all other major needs of Indian children, the right to a healthy childhood basically concerns the poorer sections of society. More than a third of all child deaths in the world occur in the South Asian countries of Bangladesh, India and Pakistan.⁴⁴ The infant mortality rate has fallen over the years but is still quite high.⁴⁵ The major problems which lead to child deaths are malnutrition, ignorance about preventable diseases, poor sanitary conditions and unsafe drinking water.

These problems were not given much attention by the State because they were looked upon as "services."⁴⁶ Hence, although India is a signatory to the 1959 Declaration which recognizes the child's right to "grow and develop in health" and his claim to "adequate nutrition"

41. Document: *National Policy for Children*, *supra* note 10, at 361-62.

42. Quoted in Joshi, *Educational Television for Rural Children*, MAINSTREAM (Delhi), July 26, 1986, at 19; Baig, *What Have We Done with Our Children?*, *supra* note 32, at 32.

43. UNICEF, *supra* note 5, at 3-4; see also, Document: *The Child in India*, *supra* note 6, at 364-66.

44. UNICEF, *THE STATE OF THE WORLD'S CHILDREN* 1989, at 26.

45. UNICEF, *supra* note 5, at 37; see also Document: *The Child in India*, *supra* note 6, at 364.

46. Rao, *Perspective of Strategy for Health*, MAINSTREAM (Delhi), Nov. 1, 1986, at 6-9.

and "medical services,"⁴⁷ Indian legislation did not take into account every child's right to certain basic requirements necessary for growth and development. The Indian Constitution states in Article 39 that children should be given "opportunities and facilities to develop in a healthy manner . . .," and child health has been dealt with in one way or another in several statutes.⁴⁸ However, until recently it has not been given the importance it deserves when taken in the Indian context. As has been mentioned, legislation which requires the medical examination of children can only be found in statutes dealing with the employment of children in industrial establishments. There is no such law with respect to children working in non-industrial occupations or children in general. Child health is also the subject of legislation dealing with prevention of smoking and the necessity of smallpox vaccinations.⁴⁹ Medical examination and treatment of delinquent or neglected children has been dealt with under the Children Act, 1960.⁵⁰

As has been pointed out, the National Policy for Children put into perspective the needs of Indian children. The resolution stated clearly the necessity of providing health services to all children.⁵¹ The first three points of the fifteen-point policy document laid down that all children would be covered by a comprehensive health program. Nutrition programs would also be developed to remove deficiencies in the diet of children. Besides these plans, the nutrition and nutrition education of expectant and nursing mothers would be simultaneously taken care of. The document also announced the intention of the State to give priority to child health and nutrition programs. The National Policy for Children envisaged the establishment of an Integrated Child Development Services ("ICDS") scheme which would deliver a "package of services," mostly dealing with child health and nutrition, to the poorer sections of society.

Finally, the declaration by the Heads of State of the member countries of the South Asian Association for Regional Cooperation (SAARC) shows that achieving a basic standard of health for all children has become one of the primary goals of States in this region.⁵²

E. Destitution and Delinquency

Over a hundred million children in India live in conditions of ex-

47. BHAT, CHILD AND LAW 9-12 (1979).

48. *Id.* at 38-40.

49. *Id.*

50. The Children Act, 1960, § 31, 3 INDIA A.I.R. MANUAL 153-54 (4th ed. 1979).

51. See *Document: National Policy for Children*, *supra* note 10, at 361-64.

52. UNICEF REGIONAL OFFICE FOR SOUTH CENTRAL ASIA, *supra* note 4, at 8.

treme poverty.⁵³ Once again, statistics show that most neglected as well as delinquent children come from the poorer sections of Indian society.⁵⁴ The circumstances they grow up in result in neglect and exploitation and, in some cases, push them into juvenile delinquency. However, Indian legislation has tried to keep up with the situation by enacting laws which seek to protect and rehabilitate both destitute and delinquent children. Destitute children are certainly a problem in India, but juvenile delinquency has yet to reach the proportions it has in other countries.

The Indian Constitution in Article 39(f) states that childhood and youth are to be protected against exploitation and against moral and material abandonment.⁵⁵ In fact, legislation in this area existed in India much before independence,⁵⁶ and since then many of the states constituting the Indian union have enacted their own laws on the subject.⁵⁷ In order to achieve a certain uniformity among the various statutes, a central act on children called the Children Act, 1960, was enacted to serve as a model for the various state acts.⁵⁸

The aim of the Children Act, 1960, was to provide for the "care, protection, maintenance, welfare, training, education and rehabilitation of neglected or delinquent children and for the trial of delinquent children."⁵⁹ The statute distinguishes between neglected and delinquent children. The former are to be dealt with by a child welfare board and the latter, by a juvenile court. Thereafter, depending on the orders of the board or juvenile court, neglected children could be placed in children's homes and delinquent children may be sent to special schools.⁶⁰ The aim of both institutions seems to be to provide the child with living accommodations, to maintain and educate him and to "ensure all round growth and development of his personality."⁶¹ Additionally, the special schools are to impart training with the purpose of reforming the child. The Act also provides for "after-care" organizations in order to keep track of children after they have

53. *Document: The Child in India*, *supra* note 6, at 64, 368.

54. *Id.* at 368.

55. INDIA CONST. § 39(f); 8 INDIA A.I.R. MANUAL 316 (4th ed. 1979).

56. *See e.g.*, The Employment of Children Act, 1938, 16 INDIA A.I.R. MANUAL 562 (4th ed. 1979); *see also* Rao, *Laws Relating to Children*, in ADMINISTRATION FOR CHILD WELFARE, *supra* note 6, at 93.

57. *Id.* at 93-95.

58. The Children Act, 1960, 3 INDIA A.I.R. MANUAL 140 (4th ed. 1979); *see also*, Jain, *Law and the Child in India*, *supra* note 19, at 84-85.

59. The Children Act, 1960, preamble 3 INDIA A.I.R. MANUAL 141 (4th ed. 1979)

60. *Id.* at §§ 15, 21.

61. *Id.* at §§ 9(s), 10(s).

left the children's homes or special schools.⁶² Among other things, the Act limits the penalty which can be imposed on delinquent children and provides for the punishment of people who are guilty of cruelty to and exploitation of children, using them for purposes of begging and exposing them to liquor and drugs.⁶³ Many of the state acts provide for the penalization of those who deal with prostitution and trafficking in girls.⁶⁴ The central act, Suppression of Immoral Traffic in Women and Girls Act, 1956, deals exclusively with this problem.⁶⁵

The National Policy for Children also considers the care of orphan and destitute children as a priority in child welfare programs. The State saw a duty to provide socially handicapped and delinquent children with facilities for education, training and rehabilitation and thus help them to become useful citizens. Apart from this, the State felt bound to protect children from neglect, cruelty and exploitation.⁶⁶

However, in spite of sufficient legislation on the subject, there are a number of factors which have reduced the effectiveness of the laws. Part of the problem is a lack of consensus between the central and state acts as to the definition of the word "child." While the former defines "child" as a boy under sixteen years of age and a girl under eighteen years,⁶⁷ definitions in the state acts do not always mirror those of the central act.⁶⁸ Besides, there are also differences within the various statutes regarding procedural and adjudicative matters. The various legislation envisages the establishment of a complex administrative system consisting of two types of institutions: the child welfare boards to deal with neglected children and the juvenile courts to deal with delinquent children. This has been described as "too elaborate a system which may be self-defeating."⁶⁹ Recently, the Juvenile Justice Act, 1986, sought to bring about uniformity in the existing legislation,⁷⁰ but has so far failed to overcome the deficiencies.

62. *Id.* at § 12.

63. *Id.* at §§ 41(1), 42, 43 and 44.

64. *See id.* at § 2(1); Jain, *Law and the Child in India*, *supra* note 19, at 86.

65. 33 INDIA A.I.R. MANUAL 412 (4th ed 1979).

66. *Document: National Policy for Children*, *supra* note 9, at 362.

67. § 2(e) 3 INDIA A.I.R. MANUAL 143 (4th ed. 1979).

68. Rao, *supra* note 55, at 94.

69. *Id.* at 99.

70. Qazi, *The Abandoned Children*, MAINSTREAM (Delhi), Dec. 9, 1989, at 22; Chatterjee, *Reforming Juvenile Delinquents Down the Century*, MAINSTREAM (Delhi), Dec. 9, 1989, at 23.

IV. GENERAL SHORTCOMINGS IN CHILD WELFARE LEGISLATION AND POLICY

The preceding sections have attempted to show the main areas of legislation concerning children. It is evident from the existing statutes and policy documents that efforts have been made on this front in the past few decades. The most immediate needs of Indian children have been identified, and parallel steps have been taken in the form of legislation to fulfill these requirements. But it is obvious that despite passing the necessary laws, almost to the point of there being "a surfeit of laws dealing with children,"⁷¹ children are only marginally better off than they were in the past. In the foregoing pages an attempt has been made to enumerate the reasons why legislation in each individual area has not made much of an impact. Apart from these specific causes, there are certain flaws common to the various statutes which have also been responsible for the failure in implementation of such legislation.

Unfortunately, the existing statutes do not take into account the particular Indian situation of lack of funds and facilities, coupled with a large population of needy children. Instead, the statutes call for the creation of a vast administrative machinery. The Child Labour Act, 1986 for instance, requires the formation of a new group of personnel to be called Child Labour Inspectors, in addition to the already existing administrative bodies set up under labor legislation.⁷² This not only makes the whole structure top-heavy, thereby slowing down actual work, but it also diverts scarce funds from projects which could have directly benefitted the child. Another case in point is the legislation on neglected and delinquent children, which calls for the establishment of an elaborate network of child welfare boards, juvenile courts and probation officers.⁷³

Also missing in the body of law pertaining to child welfare in India is the involvement of non-governmental organizations, social activists and normal citizens. Such groups or individuals should be given powers under the law to monitor the activities of both public servants as well as those employing children in any way. The absence of such provisions results in either too much power being placed in the hands of public officials or an unholy alliance between officials and, for example, employers of children working in industries. Under the Child Labour Act, 1986, only a factory inspector can register complaints of

71. Jain, *Law and the Child in India*, *supra* note 19, at 82-3.

72. Grover, *supra* note 29, at 18.

73. The Children Act, 1960, 3 INDIA A.I.R. MANUAL 140 (4th ed. 1979).

violation of the Statutes by employers using child labor.⁷⁴ The Children Act, 1960, states that complaints concerning cruelty to children must be sanctioned by an official appointed under the Act prior to the complaint being brought before a court.⁷⁵ This means, for example, in the event of an offense committed by an official working in a children's home, that there is no way under the Act for a third party to file a complaint in court against the official. The Statute also forbids suits or legal proceedings against public servants appointed under the Act, with respect to anything which is done in good faith or intended to be done in pursuance of the Act.⁷⁶

Another point of concern is the lack of stringent punishment for offenders. In the first place, offenders are difficult to track down, and in a police force suffering from lack of personnel and facilities, the arrest of such persons is not given top priority. But more importantly, once they are taken into custody, a fairly widespread offense, such as exploitation of child employees, is punishable with a maximum fine of a thousand Indian rupees,⁷⁷ a very small sum indeed in comparison to earnings from child labor.

The situation of the child in India shows that legislation alone (even if it were to be corrected in the ways just mentioned) is not enough to better the lot of children. Although certain rights should be enjoyed by all children in India, these rights are primarily meant to guarantee a better life for the vast majority who are poor and particularly vulnerable. As seen in the preceding pages, the needs of Indian children are far less complicated than those of their counterparts in the West. However, a realization of these rights is intrinsically bound up with some of the most urgent problems of Indian society. Unless there is a forceful effort towards the eradication of poverty, ignorance and exploitation of the weak, the best of legislation will not have much of an effect on India's children.

As far as the policy of the State is concerned, child welfare services should be geared towards those of the poorer sections of society who would not voluntarily make use of them. This means that much more of the planning and implementation of state programs should be left to the administration and local communities at the district and village level.⁷⁸ Also, workers employed under state health or education pro-

74. Hindu (Madras), *supra* note 30, at 8.

75. § 41(2) 3 INDIA A.I.R. MANUAL 156 (4th ed. 1979).

76. *Id.* at § 57.

77. *Id.* at § 44.

78. Jagannadham, *National Policy for Children*, in ADMINISTRATION FOR CHILD WELFARE *supra* note 5, at 11; Apte, *Priority Needs of Children in India*, in ADMINISTRATION FOR CHILD

grams must be given higher salaries and better facilities for work. The recent ICDS scheme⁷⁹ of the State, which aims at providing mostly health-related services to children, is once again a typical example of the Indian solution to problems. An intricate administrative structure has been set up to implement the programs, with comparatively well-paid officials at the top of the pyramid to do the supervisory work. In comparison, the field workers who do most of the actual work are left to make do with poor facilities and extremely low salaries. Finally, not much financial or other support has been given by the State to voluntary organizations which, working in a far less bureaucratic fashion with lower costs and more personal involvement, could do a much better job.

V. DOES INDIA NEED THE CONVENTION?

It is hoped that the Convention, once it is in force, will "provide a place to stand for all those who would exert leverage on behalf of children."⁸⁰ In addition, expectations are high that, in the future, the Convention will be a "moral and legal wall that the breach of which will increasingly come to be regarded as a matter of international shame."⁸¹ Articles 44 and 45 of the Convention deal with its implementation. States Parties to it are required to submit a report to the Committee on the Rights of the Child. The first report is to be filed within two years of the entry into force of the Convention for the States Parties, and thereafter every five years. The report is to show the steps that have been taken by the State to give effect to the Convention, as well as the progress made by it. It is also to include difficulties faced by the State in fulfilling the terms of the Convention, the idea being to thereby assist States conforming to the Convention rather than penalize them for failing to do so.⁸² One wonders whether this milder method of getting States Parties to adhere to the Convention will result in erring States being "internationally shamed." There seem to have been suggestions for a more stringent implementation system which were not fully discussed due to the general rush towards adoption of the Convention.⁸³ In India, the importance of the Con-

WELFARE *supra* note 5, at 34; Kulkarni, *Child Health Revolution—Dues Green Revolution Offer Parallels?*, MAINSTREAM (Delhi), Apr. 7, 1984, at 21.

79. See Kapoor, *Integrated Child Development Services Scheme*, in ADMINISTRATION FOR CHILD WELFARE *supra* note 5, at 169-76.

80. UNICEF, *supra* note 43, at 11.

81. *Id.*

82. *Convention on the Rights of the Child*, *supra* note 1, at art. 44; see Cohen, *supra* note 2, at 1452.

83. Cohen, *supra* note 2, at 1452.

vention does not really lie in incorporating children's rights based on it into the national legislation. Far more significant is the implementation of this legislation. A stricter implementation system in the Convention would have helped in exposing the State to monitoring at least at the international level. The Convention also does not allow individual complaints of children to be heard.⁸⁴ One can only hope that Article 44(6) of the Convention requiring States Parties to make their reports to the Committee on the Rights of the Child available to the general public in their countries will be followed. This public reporting procedure should allow the possibility for debate and discussion over the report.

India, like most other developing countries, has to spread its resources over a number of areas. Very often developing countries have been accused of making children victims of their economic problems. As these countries are in various stages of development, it is up to them to find out how to balance their needs and determine priorities. Many developing countries, including India, are vast countries with problems which are entirely different from those of industrialized nations. To superimpose on such countries ideas and norms born out of the Western experience may not be the answer to their special problems. It is to be feared that the present Convention might prevent non-Western nations from concentrating on the specific needs of children in their own countries in an effort to appear "modern" and in line with Western thinking. This could result in scarce funds and other facilities being used for unnecessary projects at the cost of more urgent child welfare programs. In this respect, Eglantyne Jebb's Declaration of Geneva might have been far more desirable than a detailed Convention of fifty-four articles. The Declaration of Geneva defined in its five points the rights of children as clearly and broadly as possible, thus allowing individual States the freedom to interpret and execute its provisions according to their own particular requirements.

In the light of these defects in the Convention and the existence of national legislation, the Indian child does not seem to benefit from the Convention. Although the State and even prominent social activists have been eager supporters of the Convention,⁸⁵ now that the Convention has been passed and the hue and cry is over, it is likely that the child in India will still be left out in the cold.

84. *Id.*

85. UNICEF REGIONAL OFFICE FOR SOUTH CENTRAL ASIA, *supra* note 4, at 4-5.