

**Speech of Smt. Shantha Sinha, Chairperson, NCPCR
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A Legal Framework for Protection of Rights of Children in the 0-6 Years Age

Introduction

It is widely acknowledged that there is lack of progress in providing children in the ages 0- 6 years their right to food, nutrition, care and protection.

In India, pregnancy and delivery are fraught with risk. The mother's health or even the child's survival does not cause anxiety, despite the fact that the child and mother may or may not survive. There is a silent resignation to fate, despite all the advances in medicine. This attitude, cutting across classes, is so pervasive and there is general indifference. When the child dies, consolation is drawn from the fact that not all is lost; the mother can give birth to more children, there is always another chance.

Such an attitude is compounded among the poor where the lives of infants are precarious, and parental instincts are numbed in the struggle for survival. Absence of a normative framework that supports the well-being of women and children is bound to adversely impact the manner in which the state takes up its responsibility towards mothers and infants. The infant mortality rate in India is 59 per 1,000 live births; 46 per cent of children are malnourished; there are 60 million underweight children under the age of five; and 67 per cent of pre-school deaths are associated with malnutrition. In absolute numbers, there are as many as 2.42 million malnutrition deaths under the age of five each year. The maternal mortality rate is 301 per 1,00,000, which is unacceptable by any standards. When the data are further disaggregated on the basis of birth, socio-economic status, caste and gender across the country, analysis reveals that several districts and blocks in the country have alarming statistics on infant and maternal mortality, almost on par, if not even worse, than countries in sub-Saharan Africa. Bangladesh fares better than India with regard to both infant mortality and maternal mortality rates.

This is a "hidden" disaster, larger in scale than the tsunami of December 2004. In a true democracy, every child must be regarded as indispensable and the government must be held accountable for the deaths of children and mothers. Continuous failure on this account has to be perceived as a threat to the nation's progress. It is in the process of responding to the most vulnerable, the pregnant women, poor mothers and infants in their weakest moments that democracy is tested.

The Constitution of India recognized how crucial children's well-being was to the functioning of India's democracy when it stated "that the state shall direct its policy towards ensuring that children are given opportunities 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".³ Article 45 of the Directive Principles of State Policy assured that children up to 14 years of age would be covered under free and compulsory education. However, the recent 86th amendment and introduction of Article 21A, making education a fundamental right for all children in the age group 6-14 years, does not provide for children in the 0-6 years age group. According to estimate pre-schooling under ICDS and other private initiatives covers about 34 million children leaving out approximately 26 million children. Thus, the gap between the number of pre school

children and available pre school services is large. Moreover, there are disparities in provision of ECCE in rural and urban areas.

The current consultation is to initiate a course of action for guaranteeing our children their rights by law. It is felt that a legal framework would oblige the State to ensure a whole-hearted commitment to its children. Although there is a clubbing of all children under six years of age as one whole, each milestone to be achieved requires an ambit of interventions, institutions and entitlements that are specific to the age group. For example children in the zero to six months of age it is imperative that the child is exclusively breast fed, provision of crèches and abundance of support at the family level for giving time to the child and thus it is linked to guarantee of maternal entitlements. Children up to 3 years of age would need access to health and nutrition, safe places such as crèches and so on. While children in the 3-6 years age group, in addition to health and nutritional care would need early child care centers and interventions for stimulation and learning. All these interventions must have a universal coverage and therefore as a matter of right.

In fact the World Health Organisation in its policy directive on Early Childhood Development has noted that “maternal, newborn and child health cannot be reduced to a set of programmes to be delivered to a target population. Rather mothers and children must be in a position to claim a set of entitlements as their right.” It has further noted that “for too long attention has been directed toward the development of technologies rather than towards embedding these in viable organizational strategies that organise and ensure a continuum of care.” In India, specifically assigned rights under the law will squarely place the focus on the capability of the State to fulfill its obligations corresponding to these rights through requisite investment and viable delivery systems, which guarantee such a continuum of care.

Policy and Institutional Framework

India’s first comprehensive policy for children was adopted in 1974 through its National Policy for Children which assigned to the state the responsibility to provide adequate services to children both before and after birth; to ensure full physical, mental and social development; to set up Integrated Child Development Services (ICDS) centres, balwadis and day care centres run by voluntary agencies with government assistance, and preprimary schools run by state governments, municipal corporations and other agencies.

The provision of maternal and child health services through primary health centres and sub-centres and other agencies was also adopted. Subsequently the National Policy on Education, 1986 viewed early child care and education (ECCE) “as an important input in the strategy of human resource development, as a feeder and support programme for primary education and as a support service for working women of the disadvantaged sections of the society”. ECCE involves the total development of the child, i e, physical, motor, cognitive, linguistic, emotional, social and moral. A target was set that 70 per cent of all children in the 0-6 years age group must be covered by the year 2000. Today, in 2007, only about one third of such children are covered by the ICDS, which is the only programme that reaches out to children in this age group. The programme covers 5.6 crore children in the 0-6 year’s age group as on March 2007 which is around 35 per cent of all 16 crore children in that age group.

In 1992 India became a signatory to the UN convention on the rights of the child. In the same year, the national plan of action incorporated expansion of early childhood development

activities including appropriate low-cost family and community based interventions. It also made a commitment to reduce by half severe and moderate malnutrition among children under five years of age between 1990 and 2000, a reduction in incidence of low birth weight babies and control of vitamin A deficiency and its consequence. A decade later, in the Tenth Five-Year Plan (2002-07), it set out to achieve universalisation of ICDS in all the blocks of the country.

Legal Framework

At present there are certain legal instruments derived from the labor legislations pertaining to factories act, mines and plantations, construction workers, etc, which mandate that crèches must be provided. In reality they “hardly exist”. There are not more than 23,000 crèches, “whereas 8,00,000 crèches are needed to cater to approximately 220 million women working in the informal sector and in dire need of childcare services”.

The Supreme Court has also issued orders that the ICDS should be universalised to cover all settlements in the country, reaching out to every child under six years of age, mother and adolescent girl with supplementary nutrition. Universalizing ICDS in accordance with the Supreme Court directive would mean increasing the number of ICDS centres by almost three times from the present nine lakh anganwadi centres to the required 17 lakh.

For the provision of the necessary physical infrastructure and for professional support, there is a need for legal instruments to provide all such essential services that enable children have access to health, nutrition, care and protection. There is need for a legal process by which the poor woman in labor can complain about the non-availability of the doctor or even a trained midwife. There is also a need for a law that mandates the state to provide for all the services and procedures any woman can demand in a primary healthcare centre, sub-centre or a general hospital. There is a need for a law on provision of maternal entitlements enabling exclusive breast feeding. There is a need for law that would take punitive action because children in a village have not been immunised for months together, because of the absence of an auxiliary nurse midwife (ANM) or the required dosages. There is need for law that guarantees protection for children of informal sector and migrant workers. There is indeed a need for a law that guarantees early child care centers, setting up standards for such centers. It is of utmost importance that there is a debate on the basic entitlements of children in the 0-6 years of age and explore the need for providing them the fundamental rights.

Every birth has to be seen as a statement of the child’s trust in humanity and must evoke the finest of sentiments and normative values. Every child that is born and that will be born has to come under the purview of law. For this to happen there has to be an outrage that something very wrong is happening to our children and that it cannot go on like this. A culture that welcomes and celebrates birth of every child and grieves over the loss of life of an infant and her mother has to develop. A system that establishes entitlements of children as a matter of right has to be guaranteed under law. This has to be complemented with public institutions, structures and processes and wholehearted investments to actualize the rights of children. The legal instruments could set the principles for public debate and discussion, and concretize the translation of law into actual practice.

Internationally, other nations are recognising their fundamental obligation toward investment in children from birth as a key element contributing to the nation’s development.. Chile in its recent landmark introduction of an integrated initiative providing comprehensive social support to all children from birth (called ‘Chile grows with you’) noted it as a response to an

'ethical and political imperative' for the State. In the Indian context, the legal framework is an expression of the states' commitment to its precious citizens as well as of setting norms for society. It is only when the system begins to perceive violence and inequity in access to health, nutrition, education, and protection and is compelled to bring about substantial change in favour of children's rights that democracy is nurtured. Preventing infant mortality and ensuring child health, requires a legal framework that is filled with concern for the child and believes that a child can live only because adults and their world of politics willed so. Such a wholehearted policy means a universal coverage, making investments in children without calculating the costs and sound institutional care and protection for all children.