

# EXPLORING RIGHTS OF THE CHILD IN EARLY CHILDHOOD

A Report of Interface  
for  
Perspective Building  
on  
Legal Aspect of Early Childhood Care and Development

A CLAP Publication

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## PREFACE

The birth of a child brings overwhelming emotions, joy, happiness in the minds of many and the baby needs not only the love, care and attention of the family but the entire society. The little, tender human beings are born to love all and to be loved by all. But what actually this vulnerable segment of our society receives is a matter of great irony. In the Report of the Expert Committee on Legal Aid, "Processual Justice to the People," Govt. of India, Ministry of Law, Justice and Company Affairs, Department of Legal Affairs, May, 1973 (P.32) headed by Justice V.R. Krishna Iyer it has been mentioned –"Children and Youth have been the darling of the law and the Indian Constitution authorizes favorable discrimination having regard to the need for moral and material nurturing at that tender age". The above view set forth by the eminent Committee in its report does not contain an iota of falsehood. Children are the assets of a nation. There are of prime importance in any civilized society as they would be the responsible citizens. When a child gets a cursed childhood then such child cannot become a person of normal personality. The personality shall be a stunted one and a person with such personality shall not be able to protect his valuable human rights necessary to lead a civilized life with decency and dignity. Law defines personality as right and duty bearing unit. With certain exceptions, all human beings are clothed with legal personality even when they are in their mothers' wombs before their birth, which enwraps them through out the life.

While dealing with such situation, we should attempt to identify the reactions of the civil society to the question. We are a democracy. We have given unto ourselves a Constitution, which defines and determines the manner of governance keeping the concept of a Welfare State in the forefront. Children between the age of 0-8 years of age which come within the purview of child right in early childhood though do not possess voting right are nevertheless, citizens of our country for whom promises have been made in our Constitution. Approximately 18 percent of India's population belong to the above group. What promises have been made by our Welfare State in respect of this group of children? What rights have been mandated in respect of them in our Constitution? What are the laws enacted to safeguard their well-being?

Article – 15 (3) of the Indian Constitution mandates the State to make special provisions for women and children. Any provision made for providing benefits to women and children cannot be held discriminatory. Article –23 prohibits traffic in human beings and forced labour. In other words, it prohibits selling & buying of men and women like goods and include immoral traffic in women and children. This article imposes a positive obligation on the State to take steps to abolish evils of trafficking human beings and other similar forms of forced labour including 'bonded labour'.

Article 35 authorises Parliament to make laws for punishing acts prohibited by Article –23. Article – 24 prohibits employment of children below the age of 14 years in Factories or Mines or any other hazardous employment. Apart from these rights, obligation is cast on the State under Articles –21, 39 (e & f), 42, 45, and 47 to make laws for the protection of the aforementioned categories of persons-citizens.

Doctrine of equality is ingrained in our Constitution. Right to life has been included as a substantial fundamental right in our Constitution and by judicial interpretations its scope and ambit have been enlarged. The concepts there under are applicable to women & children and they are entitled to protection against violation of such rights. These provisions are intended as major steps towards the improvement in the mother – child life cycle to build up the human capital for sustainable development.

We have tried to identify and shape these Rights particularly the Entitlements of Young Children in their early childhood through the involvement of civil society in an Interface organised especially for the purpose of perspective building around the best interest of young child in their early childhood. The present Report explores it in a vivid manner. The Report is important for the reason that the subject of Implementing Child Right in Early Childhood is the topic for the General Day of Discussion convened by UN Committee on Rights of the Child as per the decision of the Committee in its 33<sup>rd</sup> session. Hopefully it would contribute to the discourse on child right in early childhood in a positive way.

Cuttack

**In Defence of the Child Project Team.**

10<sup>th</sup> Sept, 2004

## Chapter-I Background

- 1 **Context:** The CLAP organised an one day Interface on the topic of Legal Aspect of Early Childhood Care and Development (ECCD) in the context of the proposed General Day of Discussion convened by the United Nations Committee on Rights of the Child to discuss Implementing Child Right in Early Childhood. The Interface, therefore ascertained the Rights of the young children in the early childhood with focus on early childhood care and development. In fact Care and Development are important subject matter of Child rights in early childhood. The Interface was organised in collaboration with Forum for Crèche and Childcare Service (FORCES), Orissa regional Chapter, a Network of Civil Society Groups working on Survival, Development and Protection Rights of the Young Children. It was especially organised to provide a platform for deliberation among civil society groups particularly NGOs, Lawyers, Academics and Representatives from key institutions and actors working for young children. The purpose of holding an Interface like this was to make a review of laws and policies concerning rights of young children in the early childhood linking it to best practices at the grassroots as well as household level for bringing about a change in the life style of young children.

The Interface was organised in the premises that the best interest of children can be ensured if the quality of life of children is improved from the very beginning of life by creating facilities and opportunity to assert the Right to Survival, Development, Protection and Participation so also providing space where there is greater access to quality health services, nutrition, immunisation, crèche facility, provision of pre-primary education followed by primary education and a whole gamut of support services which helps in building a life of a child in a holistic way.

As the Interface had been organised in the eve of the General Day of Discussion, there is a need to mention the importance of such Day. The General Day of Discussion is being held for one day since 1992 to discuss issues specific matters relating to children. It is being held at the behest of the UN Committee on the Rights of the Child. The General Day is a public meeting at which Govt. representatives, United Nations bodies and specialised agencies, Non-Governmental Organisations including Indigenous organisations and Youth groups and individual experts participate. The General Day of Discussion is meant to allow participant to exchange views in a frank and open dialogue.

The Committee on the Rights of the Child, a body of independent experts responsible for reviewing progress made by State Parties in implementing the Convention on the Rights of the Child decided at its 33<sup>rd</sup> Session to devote its 2004 General Day of Discussion to implementing Child Right in Early Childhood in order to broaden understanding and raise awareness about the Rights of the Young Children. The UN Committee on Rights of the Child hold such General Day of Discussion on the following topics in previous years:

- |  |      |
|--|------|
| a) The Rights of Indigenous Children                                   | 2003 |
| b) The Private Sector as a Service Provider                            | 2002 |
| c) Violence against Children within the family<br>and in School        | 2001 |
| d) State Violence Against Children                                     | 2000 |
| e) 10 <sup>th</sup> Anniversary: General Measures of<br>Implementation | 1999 |
| f) HIV/AIDS  | 1998 |
| g) Children with Disabilities  | 1997 |
| h) The Child and the Media   | 1996 |
| i) Juvenile Justice  | 1995 |
| j) The Girl Child  | 1995 |

k) Role of the Family	1994
l) Economic exploitation	1993
m) Children in Armed Conflict	1992

The subjects for discussion are important because the Convention on the Rights of the Child (CRC) confers a wide range of Rights, which are being taken up for open dialogue. All the previous themes as well as the theme for 2004 i.e. Implementing Child Right in Early Childhood are inbuilt provision within the framework for Child Right in the Convention. The Convention was adopted by the United Nations General Assembly in 1989. It is the most widely ratified international human right instrument with 192 State Parties. The Govt. of India becomes a State Party to the Convention in the year 1992 after it has ratified the Convention. The CRC has conferred several Rights on young children, which can be treated as Child Right in Early Childhood. The broad categories of Rights such as Survival, Development, Protection and Participation are all having a bearing on young children so also on Early Childhood Care and Development. Some of the major areas of concern for young children like Health, Nutrition, Immunisation, Crèche, Pre-Primary Education, Primary Education, Civil Registration, Breastfeeding, Family Environment and finally an unfettered birth of child are also subject matter of CRC which recognises all these provisions as a matter of Right of the Children. The Convention on the Rights of the Child defines a Child as every human being below the age of 18 years unless; under the law applicable majority is attained earlier. Early Childhood covers different age group in different countries ranging from 0-4 to 0-8 years. In case of India the age limit is by and large 0-7. The CLAP focuses on 0-7 age group as the stage of Early Childhood on the basis of the Indian Penal Laws (Section 82 of Indian Penal Code), which exempts a Child from any criminal liability below the age of 7. This concept is being adhered to by CLAP because the CRC has also recognised this concept, which is referred as *doli in capax* (Art. 40 of CRC). CLAP's motivation comes from a concept in the criminal law because of the very fact that it is a Legal Support and Advocacy Group exists to promote Public Interest, which include Best Interest of the Child.

As far as the definition of the Child in the CRC goes there is always a point of consideration about an age-disaggregated approach to address the Rights of the Child in various stages. In spite of confusion prevailing around the general approach to the age of children child right experts as well as practitioners particularly activists do admit that there is a need to address different issues of children in an age-disaggregated approach. Therefore, squaring a category of children in the Early Childhood framework does not dissipate the general definition of child rather it helps in a realistic consideration of Rights of the Children.

It is in this regard the CLAP has decided to hold an Interface involving NGOs, Lawyers, Academics, Key Institutions and Actors, Practitioners and Advocates of Child Right to discuss the theme of Child Right in Early Childhood from the perspective of Orissa region where the situation of children in Early Childhood is a matter of concern as per the fact and figures as well as statistics and data available on young children. The Interface primarily explored the rights of young children concerning early childhood care and development.

The subject is important for CLAP as, from 1998 CLAP is running a project titled In Defence of the Child which precisely revolved round the issues of Children in their Early Childhood. The Project explores entitlement of children in their early childhood to promote the Best Interest of Children. Broadly speaking the Project addresses the issues of young children from the legal perspective as CLAP has the unique distinction of a Child Right Group that exclusively and extensively deals with legal aspect of Early Childhood Care and Development.

The CLAP as a part of **In Defence of the Child** Project developed a set of legal intervention strategies, which address the needs of children living in difficult circumstances. The Project not only uses law as protective mechanism but also is using law as promotive instrument for holistic development of children. This is being ensured by influencing policy initiatives and legislative mechanism.

CLAP promotes Advocacy in favour of children mostly in the early childhood stage of their life so as to bring about change in the policies and legislation in order to protect the children from all forms of discrimination, exploitation and injustice and promote the best interest of the children, particularly in their nutrition, health, housing, clothing, education entitlements as these are fundamental Human Rights.

The In Defence of the Child Project seeks to realise all the Rights conferred on the Children in the domestic sphere in India. The project has been implemented with the generous support of Bernard Van Leer Foundation, The Netherlands, an agency working especially on ECCD. The project addresses the legal issues affecting the interest of the children in a framework of law in the domestic sphere.

The Project creates an environment of opportunity for holistic growth and development of children through the use of law, legal process and legal system apart from protection of rights as happens in an adversary system. This means the emphasis is always on promotional aspect of the law beside protective aspect. The objective of the project broadly revolved round certain issues of current importance, which has a direct bearing on children such as the following:

- (1) Health and Nutrition Entitlement,
- (2) Pre-Primary and Primary Education Entitlement,
- (3) Crèches and Universal Childcare Services,
- (4) Maternity Entitlement,
- (5) Social Security Measures,
- (6) Sex-Selection and Determination,
- (7) Universal Civil Registration,
- (8) Promotion of Breastfeeding,
- (9) Abolition of Child Labour System,
- (10) Juvenile Justice,
- (11) Prevention of Child Trafficking and Sexual Abuse.
- (12) Child Right to have leisure and participation.

The Interface was organised as a part of In Defence of Child Project with the sole belief that there is a need for Perspective Building of a Network of Civil Society Group around the issues of young children and ECCD, which will help in strengthening effectiveness of present practices and advocacy efforts.

- 2 **Objective:** Keeping the above context in perspective the Interface had the following two fold objective:
  - A. To create awareness about the provisions of CRC with regard to Rights of young children in their early childhood and the role being played by Committee on the Rights of the Child to discuss issue specific thematic subjects which have a direct bearing on the Rights of the Child. In this respect the Interface tried to make a downward advocacy around the thematic issue which the designated Day of Discussion is going to address in the proposed Session.
  - B. To explore the laws and policies concerning Rights of Young children in Early Childhood in the Indian context and the practices at the household level to realise the rights concerning Survival, Development, Protection and Participation. In this regard

the Interface broadly revolved round the role of NGOs in making things happen for a holistic growth and development of children. In its totality the Interface had the objective of approaching Early Childhood from legal aspect. It is a march from a need-based approach to right-based approach where the entitlements of children in their early childhood considered to be the major focus of the discourse.

While setting the objective for the Interface the CLAP made it a point to highlight the legal implications to assert the entitlement of young children, as CLAP's primary area of intervention is the Rights of Children. Within the broader agenda of CLAP to secure the Rights of the Child the present Interface created enough space to explore the right based approach to Early Childhood. Through out the discussion the methodologies to give expression to the Rights and the legally recognised Entitlements found adequate space as it was felt necessary from the very beginning of the process of holding Interface that Rights can have a meaningful reality only when the key actors and stakeholders are aware about the strategies to realise the Rights in actual practice. Therefore, the sub-theme of the Interface was decided to be 'from laws and policies to practice'.

3. **Programme Design:** At the beginning of the programme a programme schedule for the day had been drawn up. The Day was divided into following 3-sessions:

- A. Inaugural Session
- B. Technical Session
- C. Open Forum.

Besides the above 3-sessions a part of the day was also devoted for holding General Body Meeting of FORCES, which has at present 96 NGOs as its member covering all the 30-districts of Orissa State. The importance of General Body of FORCES was that the members could decide the stand of FORCES with regard to young children and ECCD in the backdrop of the General Day of Discussion.

The Programme Scheduled is enclosed as Annex-1 with this Report.

## Chapter-II

### Process

The Interface was not just organised as a response to the decision of the Committee on the Rights of the Child to designate this year's General Day of Discussion on Implementing Child Rights in the Early Childhood nevertheless it had a spontaneous impact on our plans to review our performance to bring about holistic development of children in their early childhood. This was an occasion to have a bird's eye view of what the NGOs are engaged in to ensure effectiveness in Early Childhood Care and Development as well as for the protection of best interest of young children.

In fact after ratification of the Convention by Govt. of India CLAP started its march to secure rights of the child. The efforts that succeeded the post ratification period culminated in a project, which started in 1998 under the title of In Defence of the Child project, which primarily directed at securing rights of young children in their early childhood. The sagacious effort made over a period of one decade and more specifically from 1998 made CLAP to believe that in an age disaggregated approach the issues of children need to be addressed. This argument makes us believe that early childhood care and development is a pre-requisite to actual realisation of all other rights conferred on children. For this reason CLAP has identified young children as well as early childhood care and development as a primary goal, as a matter of policy. To that end CLAP have made alliances with NGOs collectives like FORCES to amplify its voice. The Interface therefore is a collaborative effort between CLAP and FORCES. It is needless to point out here that FORCES mandate is young children.

The Interface was mostly attended by the members of FORCES Orissa Chapter. The intension behind involving members of FORCES Orissa Chapter was to provide them a platform to deliberate upon the emerging areas in relation to ECCD as well as rights of children in early childhood and exchange their experiences with one and another about sound practices in their effort to address the issues of young children. It helps them not only in articulating the strategy to confront critically legal issues concerning young children but also an opportunity to review their performance against a set of standards.

Besides, many NGOs were invited who have special programmes relating to young Children and ECCD which are innovative in nature like Street Law Programme on Child Right by CLAP, holding Schools In Railway Platforms for rag pickers and agencies like Child Line. Similarly the Interface also tried to involve representative from key Govt. Department, University and also from UNICEF apart from Media representatives.

CLAP holds such Interfaces in collaboration with various Networks and Federations on Child Right regularly to facilitate debate and dialogue on various aspects of child right. It is one such event where the subject of discussion was Young Children and Early Childhood Care and Development. The speciality of the Interfaces organised by CLAP was, it especially dealt with the legal aspect of issues in perspective.

To facilitate the discussion CLAP disseminated information on young children as well as about the General Day of Discussion. It is pertinent to mention here that the Secretariat of the Committee on Rights of the Child regularly supplied papers submitted by various groups around the world on the theme. These materials have been shared with the participants in advance to enable them to discuss the matter on the basis of their experiences.

The whole idea of holding an Interface is also important from the point of view of documenting good practices from the experiences of several actors, which can possibly be integrated in the agenda of different NGOs for strengthening their effectiveness in serving the young child. Therefore, through out the process of the Interface it was ensured that a comprehensive plan of action could arrive at which can be practically feasible for

implementation. Specifically, the Interface looked for definite recommendations from the grassroots groups, which is tested at the field lab, which can then be shared with a wider audience and stakeholders for necessary changes in the policies and laws.

### **Chapter-III**

## **Participants Profile**

The Interface was attended by representative from NGOs who are active either directly in the field of ECCD or working for realisation of Rights of the Child and also those who are members of FORCES Orissa regional chapter, lawyers, policy makers, media representatives, UNICEF representatives and experts in the field of child development. Besides, representative of various child right networks like Forum for Crèche & Child Care Services (FORCES), Campaign Against Child Labour (CACL), Campaign Against Child Trafficking (CACT), Breast Feeding Promotion Network of India (BPNI) and Campaign Committee on Right to Food also participated in the programme to share their respective stands with regard to issues of young children. Majority of participants belong to NGOs who are drawn from 14 districts out of 30 districts of Orissa.

Membership based organisations like Young Women's Christian Association and Young Men's Christian Association also took active part in the Interface. Similarly, from the consideration of the constituents, these groups are serving a variety of services for children of tribal families, dalit (social class), minority communities and children living in most difficult circumstances including rag pickers and displaced families. In terms of women participation around 13 women participants represented in the Interface. Some representative of orphanages operating in Orissa also attended the Interface. The Interface was also attended by representatives from Child Line, a online advisory service and Ruchika School which has large coverage of children belonging to lowest strata of the society and who are street children and rag pickers.

The Interface had also representatives from FORCES National Network a child right network involved in promotion of Survival and Development Rights. All these groups finally are also major constituents of the Legal Network of CLAP, which exists to develop Legal Intervention Strategy to confront critical legal issues. The representative of Orissa Association of Blind and one more local group involved in addressing the issue of disability in children also another dimension of the nature of participation. In its totality the Interface was a multi-stakeholder deliberation where the Rights of young children from a variety of aspect could be addressed.

A list of Participants is given in the Annex-2 of this Report.

## Chapter-IV

### Conceptual Framework

The Interface was organised with a conviction that laws, legal process and legal system have a positive bearing on young children and in order to render Early Childhood Care and Development and to secure rights of young children policies and laws have to be re-oriented for affirmative actions. Accordingly, a framework for addressing the issues of young children and ECCD has been developed around which the discussion took place. However, the experience of CLAP suggests that laws by themselves cannot bring about changes in the life of the child unless positive laws are being translated in to actual implementation. This conviction led CLAP to include a sub-theme of the Interface as ‘ From Laws and Policies to Practice’.

Before delving deeply in to the conceptual framework for the Interface, there is a need to understand the existing construction of early childhood. The following are the stages of early childhood in the present vocabulary concerning young children:

#### **Stages of Early Childhood:**

***Prenatal period:*** -from conception to birth. During this period nutritional health of the mother has to be ensured. In this period tetanus toxoid injection is to be given to the pregnant woman.

***Neonatal period:*** - It covers from birth to 2 weeks. Usually there is mortality, during this period in a large number unless competent medical services are available. To reduce infant mortality the Paediatricians stress special emphasis on this period.

***Infant:*** - This period covers from 2 weeks to 1 year. After a live birth, if a child dies during this period, it is described as Infant Mortality. One of the services prescribed in CRC under Article-7, is to be registered immediately after birth. ECCD Centre should take steps to ensure this Right of the child.

***Post Infancy:*** - Post Infancy Childhood covers from 1 year to 2 years. Only after the first year various immunization programmes should start unless the doctor prescribes otherwise.

***Early Childhood:*** - Early Childhood is covered from 2 years to 5 years.

***Late Childhood:*** - Late Childhood covers the sixth, seventh and eighth years of the child. During this period Lower Primary Education as a Fundamental Right starts in India. ECCD centre prepares the child for school going habits as Pre -primary Education.

The paediatric approach to major development periods of the child after birth can be supported by various Laws, Acts, Rules, Regulations or Special Schemes meant for children considered non-discriminatory. Thus emerges legal paediatrics.

#### **Issues Relating to Young Child:**

The conceptual framework brings into its orbit a whole gamut of rights, which have been conferred on young children within the purview of Convention on Rights of the Child. It can be discussed in following two broad heads covering Issues relating to Young Child:

- I. Early Childhood Care and Development.
- II. Child Rights in Early Childhood in a Life-cycle.

A mention needs to be made about the above two divisions. ECCD is not a separate subject from the Rights of the Child in Early Childhood. ECCD is a Right in itself. It is very much

within the framework of rights for young children in their early childhood. The need to discuss it separately arises for the reason of its independent character and as a special requirement for holistic growth and development of child. ECCD as a matter of Right is predominantly owes its origin in the Positive Rights.

The Convention on the Rights of the Child is unusual among Human Rights Conventions in that it seeks to promote positive as well as negative rights. Negative Rights, enjoying a longer tradition, stipulate that something not to be done. They are Rights not to be wronged in some specified way. Whereas Positive Rights include the Right to adequate nutrition, primary health care and basic education. Positive Rights are produced goods and services. They are therefore, dependent on resources, the allocation of which may be affected by scarcity and competition. Negative Rights, on the other hand know no such limitations. They do not have to be created, only protected and therefore, feasible to honour them whether a country is a rich or poor. It is worth remembering that some Negative Rights such as the Freedom from violence may well depend for their implementation on their being converted into Positive Rights, for example the Right to protection by Govt. The fact that Negative Rights do not involve direct resource costs make it easier to argue the case for their universality and inviolability. In some cases it may be that an economy may simply not have sufficient resources to enable all to enjoy the Right to adequate nutrition and health care. This raises the disturbing possibility that Negative Rights are inviolable in a way that Positives Rights are not. The question here is how can a Right be considered inviolable, if it is not always possible to protect it. The Convention on Rights of the Child implicitly recognises the distinction between Negative and Positive Rights. While Article 24 obliges the Govt. of all ratifying countries to diminish infant and child mortality and to combat diseases and malnutrition, Article 4 of the Convention makes the concession that countries shall undertake such measures to the maximum extent of their available resources.

In this backdrop of distinction of Rights the above division of Rights have been contemplated. Let us analyse both the divisions to draw a framework of rights for young children in their early childhood:

### **Early Childhood Care and Development:**

Early Childhood Care and Development (ECCD) is all that the name implies and more; it comprises all the essential supports a young child needs to survive and thrive in life, as well as the supports a family and community need to promote children's healthy & holistic development. This includes integrating health, nutrition, and intellectual stimulation, providing the opportunities for exploration and active learning, as well as providing the social and emotional care and nurturing a child needs in order to realize her/his human potential and play an active role in their families and later in their communities.

The expansion of Early Childhood Care & Development (ECCD) activities has attracted the attention of the World since 1990. By the turn of the century what was once considered as Early Childhood Development (ECD) or Early Childhood Care and Education (ECCE) or in any other similar nomenclature, were considered to be inadequate in the context of the Rights of the Child. Effective initiative can be ensured, it was felt, if the expression changes into Early Childhood Care and Development (ECCD).

Development of a child can have two fold purposes:

- (b) The Child's physical growth.
- (c) The Child's mental progress.

The physical growth of the child was perceived to be the immediate need. It was mostly related to the care aspect and, therefore, a component of healthy practices in a community are inevitable to be organized.

Primary Health Care facilities and opportunities attracted attention in developing countries like India. The outside intervention mostly in the nature of efforts like day-care centres, crèches and other institutions of similar pattern became the vogue of the innumerable efforts. It developed a paediatric approach, including the treatment of diseases of childhood or diseases of Infant and children. Today it is more a science of right living of the parents, care giving guardians and custodians of children and it is the responsibility of workers engaged in providing medical services to educate and make parents aware about their duties. Thus the science of childhood, preventive & curative aspects included, put an emphasis on the ten basic Rights of the child as per U.N. Declaration which was presented as the World's guarantee from the top Macro Level Organizations to the mankind who care to listen.

The survival aspect was introduced, both as a preventive major as well as a survival major, in which the correct action in the prenatal and postnatal stages can diminish infant and child mortality. The developing countries like India are still struggling to diminish infant and child mortality. Only a few countries in the World have single digit infant mortality rate for every one thousand live birth. There are some states who are signatories to the World declarations and the Convention on the Right of the Child (CRC), who have double digit or multi-digit infant mortality rate which was known to be the negative indicators of development. It can remain unattainable in the absence of effective provision by the state. This indicates the fact that preventive health care requires a good deal of sustained attention, if infant or child mortality is to be diminished. The child is not to be deprived of his or her right of access to health care services the state has to take appropriate measures to diminish infant and child mortality.

The health of a citizen is the Nation's best asset. Health is not mere absence of disease but it is the wholeness of being.

Health services as a preventive major represent the survival aspect. There can be simultaneously another aspect of the mental development of the child e.g. education. Article 5 of the World Conference on Education for All in Jomtien in 1990 Declaration states that Learning begins at birth. This calls for early childhood care and initial education. These can be provided through arrangements involving families, communities, or institutional programmes, as appropriate. During a follow-up meeting in Dakar in 2000 the first of the adopted goals is: Expanding and improving comprehensive early childhood care and education, especially for the most vulnerable and disadvantage children. The educational growth of a child may be a simultaneous right under Article 28. A separation of age group from whom primary education should be made compulsory and available free as a matter of fundamental right. There is an argument in favour children in the age group of 0-5 years for whom day care centre for early childhood care and education schemes like crèche balwadi, kinder-garden, Nursery schools, Play schools, Joyful education and a similar other educational facilities should be ensure. This represents the other aspects of development. In the belief of this hypothesis, ECCD takes a comprehensive characteristic that can mostly be tackled by the various other disciplines like education, psychology, sociology and economic etc. or a meta-legal approach.

Guidance for parents can be extended indeed by family planning education services as an imperative preventive measure too. However experience shows that success of family planning education may pose problems of reduction in child population affecting education in general and ECCD in particular.

The best interest of the child has to be safeguarded in the creation of facilities and opportunities in the matter of health and educational services. Abolition of practices, prejudicial to the health of the children through effective and appropriate measures seems implicit.

Justice and equality of status and of opportunity are emphasised in Constitutional direction to the State to secure a social order for the promotion of welfare of the people. There are provisions in Indian Constitution regarding policy to protect the tender age of children against abuse. It also directs the state to frame policies towards the opportunities and facilities to develop in a healthy manner in conditions of freedom and dignity and the childhood and youth are protected against exploitation and against moral and material abandonment. The constitution further directs the State to strive to minimize the inequality in income and endeavour to eliminate inequalities not only amongst individuals but also amongst group of people residing in different areas or engaged in different vocations.

Accordingly “groups of people residing in different areas” needs to be examined from the point of view of Ekistics, or the science of study of human settlements in the perspective of studying in the various ways of implementing Childhood Rights in early childhood.

The study of the people engaged in different vocations is also important because every vocation may have its own environment. Ordinarily the family has its traditional vocation for which mere literacy may not contribute necessary support. The parents of the child and their Meso-system as well as their Micro-system influence them in the matter of choosing vocation or being prepared for the vocation of child. In many cases the parents of the child may be capable of choosing more than one vocation.

The health aspect also requires a somewhat a different care for vocational groups like weavers, potters, blacksmith, bricklayers etc. Therefore, they also contribute to the development of the child by proper adjustments.

#### **Child Rights in Early Childhood in a Life-cycle:**

A life cycle approach in the matter of right of the child in the early childhood can ensure the survival, development, protection and participation of the child in various groups in age-disaggregated approach. The following issues emerge when we address child right in early childhood in a life cycle:

The medical termination of 1971 Act in India legalised termination of certain pregnancy by registered medical practitioners only on humanitarian ground as a health measure and on eugenic ground where the length of pregnancy does not exceeds 12 weeks. In case the medical experts forms in good faith an opinion that the continuance of the pregnancy would involve a risk to the life of pregnant women or a grave injury to her physic on mental health or there is a substantial risk that if a child were born he would suffer from such physical or mental abnormalities, as to be seriously handicap. Where the pregnancy of women has been caused by rape such pregnancy shall be presumed to constitute a grave injury to be the mental health of the pregnant women. Where any pregnancy occurs as a result of failure of any device or method used by any married women or her husband for purpose of limiting the number of children the anguish caused by such unwanted pregnancy may be presume to constitute a grave injury to the mental health of pregnant women. No pregnancy of women who was attained the age of 18 years or who having attained the age of 18 years is a lunatic shall be terminated without the consent of her guardian in writing. No pregnancy shall be terminated except with the consent of the pregnant women.

Pre-Concept and Pre-Natal Diagnostic Techniques (Prohibition of sex selection) Act 2003 prohibits Sex Selection and Determination both before and after conception. It regulates but does not ban the use of pre-natal diagnostics techniques like ultrasound for detecting genetic abnormalities or other disorders. Any nursing home registered practitioner or hospital that does ultra sound requires to state that it does not do such determination. The Medical Council can cancel the registration of a doctor guilty of violating the law. Any person who seeks help for sex selection can face a three-year imprisonment on first conviction and can be fined Rs.50,000/- . However it is described as a paper tiger.

Recognising the right of a child to have a name, to acquire a nationality & to know and be cared for by his or her parents, the provisions are made in the CRC. Similar provisions also find place in our Constitution. Those are item 30 in list III of Schedule –VII (Concurrent list), item 16, Scheduled –12, Item 5 of list II of Schedule-7, Part 2 Art 5-12. The laws which are enacted in our country pursuant to such Constitutional provisions are (i) Registration of Birth & Death Act, 1969 and (ii) Registration of Birth and Death Rules 1970 for the State of Orissa and (iii) Indian Citizenship Act, 1955.

Every child shall have right from birth to a Name, right to acquire a Nationality and the right as far as possible to know and be cared for by his or her parents. These rights can be ensured by implementation of the state parties in accordance with their national law and their obligation under the relevant international instrument in this field, in particular when the childhood other wise be stateless. Described as civil registration under the registration of Birth and Death Act and Rules the coverage is reported by UNICEF in their State of Children reports to be vary limited. Once a child is born live escaping mortality in the womb of the mother or by stillbirth, its survival is ensured through registration of birth and death and issuing of registration certificate. It is one of the foremost steps after a live birth and CRC offers a child the right to registration immediately after birth. This right has given rise to civil registration. However, one of the initial rights of the child is generally denied to innumerable children.

In life cycle approach simultaneously with registration of birth and death, the advantage of breast-feeding has to be promoted. A child has to be protected against infant milk substitute, feeding bottle and infant food at least for the first six month. The parents would have been choice only there after. It is therefore necessary to organise the parents in all these matter.

Mother's Milk is a gift of Nature. After birth a child is entitled to suck his/her mother's milk for sustenance of life. It being the gift of nature for feeding a child, it is composed of all the necessary ingredients, which a child needs for his/her living and growth. It has no substitute. However, in modern times, for different reasons a child is denied of the food gifted by nature and instead is fed with milk prepared in laboratories by chemists. Such process results in causing several diseases both in mother and child. It impedes their development and growth both physical and mental. Recognising the evil of such process a law was enacted named 'The Infant Milk Substitutes, Feeding bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992.

Working outside home during lactation has disastrous consequences. The health of the mother and child varies to a large extent depending upon the type of work, place of work, socio-economic and educational status of women, environmental sanitation and availability and utilisation of health care services, which ultimately results in the decline in breast-feeding practices among the workingwomen. Article – 42 of our Constitution provides for just and human condition of work and maternity relief. The Maternity Benefit Act, 1961 is one, which has been enacted to realise the Constitutional obligation cast on the State. Service code of Union and State Govt. provides maternity benefit to employees. In case of lactating working mothers who are to attend their work outside their homes, this problem of feeding the new born babies is considered to be one of the major concern of the entire society. As our nation is marching forward to achieve its aim of empowerment of its women folk, it has to give more attention and importance to the future progeny of our Country, i.e., the infants. There are few enactments where we find provisions in this regard, viz. the Plantation Labour Act in Section-12 provides for Crèche Services. Section –48 of Factories Act makes provisions for Crèche. The Building and Construction of workers (Regulation etc.) Act, 1996 in Section-35 makes provision for Crèche. But in reality what we find is that these laws are more often flouted. Though there are crèches in some factories yet working mothers have to face many other problems like bringing the 6-8 weeks old infants to the crèche daily in a public transport system that is mostly over crowded and even when a mother could some how bring her child to the crèches she could feed the child only at specified times, if for any reason the baby refuses to take the feed at the scheduled time, breast milk substitutes have to be given.

The IPC establishes the interest of unborn child and infants in its provision under Section 312 to 318.

The Juvenile or child means a person who was not completed 18<sup>th</sup> years of age under the latest Juvenile Justice (Care and protection of children Act) 2000. A clear distinction has been made in this Act between the juvenile offender termed as juvenile in conflict with law and neglected child who need care and protection. For neglected children, the law provides for care and protection through Child Welfare Committee. The Child Welfare Committee is supposed to take appropriate action who rehabilitate neglected children in shelter homes. The present Act attempts to be child friendly and provides for proper care and protection. It is in fact a blueprint for child welfare.

Unfortunately, despite elaborate provisions contained in our Constitution and in the laws enacted with the object of protecting the children from several vicissitudes to which they are exposed, their suffering continues. The Constitution and the laws with all their good intentions have not been able to deliver the expected results. Possibly, this has happened on account of lack of concern and absence of commitment by the Govt and Civil Society. The attempts are being made now by organising such discourse. These may perhaps create awareness in the Civil Society to some extent, which ultimately will bring about a change in the life of 18 percent of total population of our Society.

It is most appropriate to consider whether the state party who have recognized the Right of the child as depicted in the Convention of the Rights of the Child are making effective provisions or not.

The Convention on the Rights of the Child has also provided a yardstick or indicator in Article –41 of CRC. Hence, the performance of a state comparable to the same do indicate the mutual dialogue every five years between the concerned states and the Committee on the Rights of the Child established under Article –43 of the CRC for further action by the state.

Dialogue between India and the Committee on the Rights of the Child on the basis of the report and reflection pointed out to the area of non-performance, gaps and of course the requirements still awaits to take shape in programmes. This may be applicable to every other State who is signatories of the CRC.

## Chapter-V Issues

The Interface was organised especially to deal with the legal aspect of ECCD and the issues of young children as well as child right in early childhood. ECCD as an issue in itself was the main subject matter of discussion in view of its growing importance within the broader framework of Child Right. The significance of ECCD for children living in most difficult circumstances is the main agenda for discussion.

In order to address the issues of ECCD and young children there is a need to have a clear definition of ECCD as also young children. But the present vocabulary of ECCD is so much controversial and ambiguous that there is no unanimity with regard to what exactly constitute ECCD. It means different things to different people. However, when one deals with legal aspect of ECCD and/or Young Children as well as Child Rights and Early Childhood a vast array of issues emerge within the sphere of these categories like Sex Selection and Determination which prevents Right to be Born Free, Civil Registration which also establishes the Right to Identity, the Infant Right to Breastfeeding as against Baby Formula Foods, Access to Public Health System and proper medical facility, Immunisation, Nutrition, Crèche Facility, Pre-Primary Education and Primary Education, Adoption, issues of abandoned children and Facility for Family Environment, Right to Leisure as well as participation and finally protecting them from exploitation, neglect, injustice and victimisation. Many other specific issues like disability, HIV/AIDS, guardianship and custody as well as maintenance are the areas of concern while dealing with issues of young children, child right in early childhood and ECCD. The State obligation towards young children to protect them from all forms of discrimination, violence and exploitation and contemplating policies as well as legislations are also important from the perspective of good governance because of the role of State as ultimate guardian of children. All these issues together constitute Rights of Child in Early Childhood when a legal analysis is made. Therefore, the interface covered these specific issues under the broader framework of child right in early childhood.

However, taking into consideration some of the important facets of Rights in Early Childhood, the following issues have also been identified as priority sectors for intervention:

1. Infant Mortality, child mortality and also mother mortality.
2. Prevention of Malnutrition.
3. Universal Immunisation and Basic Health Service.
4. Right to Leisure and Participation.
5. Strengthening Civil Society Action.
6. Regulation of Services for children by Private Sector.
7. Good Governance, accountability and transparency.
8. Investment in Social Capital.
9. Role of Parents, Family, Community, Civil Society and the State.
10. Child Right Education.

## Chapter-VI

### *Status of Young Children*

It was felt necessary both by the host of the Interface i.e. CLAP and FORCES as well as participating groups and individual that in order to understand the conceptual framework relating to ECCD in proper perspective it is vehemently needed to have a glance at the status of young children in India as well as in Orissa. Such a comparative analysis would help in building a perspective on young children and the desirability of ECCD. Keeping this in view the CLAP supplied information to the participants, gathered from various sources including from the India's First Country Report and India's First Periodic Report to UN Committee on Rights of the Child. Similarly, **The Indian Child: A Profile 2002**, publication of Department of Women and Child Development, Govt. of India and UNICEF publications have been referred for developing a status paper. Broadly, the review of status of young children which has a direct bearing on ECCD reveals the following information concerning State of Young Child:

*i) Status of Young Children in India:* It is estimated that the total population of young children in the age group of 0-6 is 157,863, 45, somewhere around 170 million which almost 17.5% of the total population of India as per 2001 census. This figure does not comprise 0-8 age group population as the enumeration in census covers 0-6 age group. However, out of every 1000 live birth 76 children die before completion of their 1<sup>st</sup> year of birth. Under 5 mortality rate is even higher with 98 deaths in every 1000 live birth. Out of the 170 million children 47% are malnourished. This may be perhaps due to the insufficient budgetary allocation for children, which is only 2% at present out of the total budget. Pre-school child death associated with malnutrition is 67%. In India Pre-school attendance between the ages of 3-6 years is 35% in rural areas and 48% in urban areas. Of these 37% are in Anganwadis, 11% in Balwadi and 34% in Private facility and the remaining 19% in different other Govt. facilities. The Integrated Child Development Scheme (ICDS) is the major programme for ECCD. The achievement of ICDS is in respect of quantitative expansion but access to ICDS is very much limited. In India only 10-12% of all eligible children in the age group of 0-6 is able to reach Anganwadi Centre under ICDS. As against 18.9 million in 1997, the ICDS in 1999-2000 reached approximately 26.5 million children below the age of 6. Of these, nearly 12.7 million children between the ages of 3 and 6 participate in centre based Pre-school educational activities. It is estimated that India today requires 800,000 creches for its young children. Against this at present there is only 14,925 creches operate under the scheme of Crèches for working and ailing mothers and National Creche Fund. Similarly, ICDS at present caters to the need of 20 million children whereas the need is for 60 million children. The ICDS provides services like health, nutrition, early childhood care and pre-school education. As of March, 2002 there were 427,862 Anganwadi centres run under ICDS. The number of beneficiaries at this time in the age group of 0-6 who received supplementary nutrition was 31,503,764 and the number of children who went through pre-school education was 16,655,533. In spite of the degree of success in reaching approximately 2.31 million children and 49.23 million expectant and lactating women, there is whole lot of deficiencies and inadequacies in the Scheme particularly in respect of infrastructure, outreach for 0-3 children, day care services and the quality of service.

In case of breastfeeding only 37% of children in the age group of 0-3 months are exclusively breastfeed in rural areas and 27% in urban areas. In case of breastfeeding due to presence of a large number of manufacturer of baby formula food an unfettered universal breastfeeding is largely affected.

As far as immunisation is concerned only 38% are fully immunised out of which 34% belong to rural area whereas 52% represents urban areas. The civil registration is also suffers from inadequacies as only 46% children below the age of 5 years are reported to be registered. What is outrageous is even this 46% who have reported to be registered is improper as in most of the cases a proper birth certificate is not issued. The result is that the purpose of the Registration of Birth and Death Act has proved to be meaningless.

**ii) Status of Young Children in Orissa:** As the Interface was held primarily at Orissa regional level therefore we feel there is need to look at the status of young children in Orissa as well. The Orissa State is situated in the east coast of India 81° 29' E-87° 29' E (Longitude) and 17° 49' N-22° 34' N (Latitude). The State covers an area of 155707 Sq. kms. The population of children between 0-6 years in Orissa is 5.2 million which constitutes 14.1% of total population of the State as per 2001 census. Orissa unfortunately figures at the top in the list of States where the IMR and Below 5 mortality rate is highest with IMR stands at 96 death of every 1000 live birth (2000). Neo-natal mortality, Post-natal mortality, Child mortality and Under 5 mortality in the State are 48.6, 32.3, 25.5 and 104.4 respectively. Anaemia among children (6-35 month) is 72.3% in the State (2000). The National Family Health Survey reveals the fact that children of under 3 age group underweight is 54.4, Stunted is 44.0 and wasted is 24.3 percentage in the State. Various ECCD Schemes under Govt and Non-Govt. Agencies are able to reach out to only 19.6% of the 3-6 age group population. 55.1 % of boys and 51.4 % girls in between 1-5 years face some form of malnutrition or other. During 2001-2002 about 9.81 lakh children have been enrolled under pre-school activities against 8.92 lakh children enrolled during 2000-2001 under the ICDS Programme. Percentage of children aged 12-23 months who were fully immunised is only 43.7% (1999). In case of breastfeeding only 24.9 % of mother started breast-feeding within one hour of birth whereas 58.1 % mother squeezed their first milk from breast (1998-99). 45.7 % are given exclusive breastfeeding in the state (1992-93). As far as civil registration is concerned only 58.6 % (1995) is covered which is also incomplete as in most of the cases birth certificates have not been issued. There is a downward trend in the Female Sex Ratio in the major cities of Orissa particularly the Bhubaneswar (Khurda-901) the State capital which is even, less than the National average of 933. This shows that there is probability of massive use of Sex Determination Technique followed by Sex Selective Abortion. There are 85 orphanages operate in Orissa who are duly recognised by Govt. The State is prone to Disaster, which visits the State regularly in the form of Cyclones, Drought and Flood making children vulnerable. Access to Primary Education is yet to be properly extended to all eligible children and the present rate of enrolment at Primary Level stands at only 48.16 % (2002-03) whereas dropout rate at Primary level and Upper Primary level are very high 43.5 % and 57.00 % respectively. In every case the interest of girl child is overlooked.

## Chapter-VIII

### Rights of Child in Early Childhood

#### *International Law-Overview of CRC:*

To draw the sanction for Rights of young children in the early childhood most of the Articles of Convention on the Rights of the Child are important. The following Articles are of immense significance as it bears provisions relating to Survival and Development:

**Article 1:** A Child means every human being below the age of eighteen years unless under the law applicable to the child majority is attained earlier.

**Article 2.1:** States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

**Article 3.1:** In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.

**Article 3.2:** State Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for his or her, and, to this end, shall take all appropriate legislative and administrative measures.

**Article 3.3:** States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and sustainability of their staff, as well as competent supervision.

**Article 4:** States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.

**Article 5:** State Parties shall respect the responsibilities, rights and duties of parents or where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.

**Article 6.1:** State Parties recognise that every child has the inherent right to life.

**Article 6.2:** State Parties shall ensure to the maximum extent possible the Survival and Development of the Child.

**Article 7.1:** The Children shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.

**Article 12.1:** State Parties shall assure to the child who is capable of forming his or her own views, the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

**Article 12.2:** For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

**Article 18.2:** For the purpose of guaranteeing and promoting the Rights set forth in the present Convention, State parties shall render appropriate assistance to parents and legal guardians in the performance of their child rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

**Article 18.3:** State Parties shall take all appropriate measures to ensure that children of working parents have the Right to benefit from childcare services and facilities for which they are eligible.

**Article 24.2:** States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

- i. To diminish infant and child mortality;
- ii. To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- iii. To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution.

**Article 27.1:** State Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

**Article 28.1:** State Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher Education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

**Article 28.2:** State Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

**Article 29.1:** State Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

**Article 29.2:** No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

**Article 31.1:** State Parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

**Article 31.2:** State Parties shall respect and promote the right of the child to participate fully in participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

#### ***Constitutional Law: Overview of Indian Constitution and CRC:***

1. The tender age of children are not to be abused and they shall be given opportunities and facilities to develop in a healthy manner.... (Article 39-e & f)
2. Early Childhood Care and Education for all children until 6 years. (Article 45-93<sup>rd</sup> Amendment Bill)
3. The State can make special provision for children (Article 15 (3))
4. The primary duty of the State is to raise the level of nutrition and the standard of living (Article 47).
5. Right to Life (Article 21)
6. Right to Free and Compulsory Primary Education (6-14) (Article 21(A)- 86<sup>th</sup> Constitutional Amendment)
7. Article 23 prohibits traffic in women and children for immoral or other purposes.
8. No child below the age of 14 years shall be employed to work in any factory and mine or engaged in any other hazardous employment (Article 24)

#### ***F. Municipal Laws: Laws Exclusively related to Children in the Age Group of 0-8:***

1. The Pre-Conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994. – Sex Selection and Determination.
2. Medical Termination of Pregnancy Act, 1971 – Legalises Abortion.
3. The Infant Milk Substitutes, Feeding Bottles and Infants Foods (Regulation of Production, Supply and Distribution) Act 1992 – Breastfeeding Amendment in 2003.
4. The Registration of Births and Death Act, 1969.
5. Maternity Benefit Act, 1961 – Lactating Women – nursing breaks.
6. Plantation Labour Act, 1951 (Creche).
7. The Child Marriage Restraint Act, 1929.
8. The Guardians and Wards Act, 1890.
9. The Hindu Minority and Guardianship Act, 1956.
10. The Hindu Adoption and Maintenance Act, 1956.
11. The Immoral Traffic (Prevention) Act, 1956.
12. The Orphanages and other Charitable Homes (Supervision and Control) Act, 1960.
13. The Probation and Offenders Act, 1958.
14. The Women's and Children's Institutions (Licensing) Act, 1956.

15. The Young Persons (Harmful Publication) Act, 1956.
16. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.
17. Factories Act, 1948 (Creche)
18. The Building and other Construction Workers (Regulation etc) Act, 1996. (Creche)
19. Bidi and Cigar Workers (Conditions of Employment, Act, 1966. (Creche)
20. The Mines Act, 1952. (Creche)
21. Contract Labour (Regulation and Abolition) Act, 1970. (Creche)
22. Inter State Migrant Workers Act, 1980. (Creche)
23. Employees State Insurance Act, 1948. (Creche)
24. Juvenile Justice (Care and Protection) Act, 2000 – Deals with neglected Children.
25. Child Labour (Prohibition and Regulation) Act, 1986 – Child Labour below 14 years of age in hazardous Occupation prohibited.
26. Indian Penal Code Section-82, Doli in Capax- Free from Criminal Liability.
27. Indian Penal Code- 312-317- Exposing Child is a Crime.

## Chapter-IX Proceeding

According to the programme schedule designed for purposes of holding the Interface the Day was divided in to 3-broad sessions. They are as follows:

- A. Inaugural Session.
- B. Technical Session.
- C. Open Forum.

The following lines succinctly delineate the proceedings of the Interface:

**A. *Inaugural Session:*** Just after the registration and a formal self introduction of the participants the Inaugural Session started. The inaugural session was chaired by Justice Sarojkanta Mishra, Former Chairman of State Administrative Tribunal and Law Secretary, Govt. of Orissa. The following dignitaries addressed the inaugural session:

1. Tom Olsen, State Representative, UNICEF, Orissa.
2. Shyam Sundar Das, President, CLAP.
3. Bullu Sarin, National Co-ordinator, FORCES National Network, New Delhi.
4. Bikash Das, Advisor to the Supreme Court Commissioners on Food and Work.

After a formal welcome by Gobinda Sethy, Advocacy Manager of In Defence of the Child Project of CLAP, the President of CLAP **Shyam Sundar Das** delivered the Keynote address. He said under the In Defence of the Child Project CLAP makes a rigorous exercise to address the issues of young children from a right-based approach. He pointed out that in a right-based approach the State has the ultimate obligation to secure the entitlements conferred on the children under various laws. He was of the view that a conceptual clarity in respect of ECCD would help the key actors and the stakeholders to come forward with specific policies giving expression to rights enumerated in the CRC. In this context he said there is a need to appreciate the different connotations like ECCD, ECD, ECE and ECCE. Broadly all these connotations seek to realise the survival and development rights. But at the same time there is the need to put in proper place the right to protection and participation. The participation rights always provide opportunity to children to play a role in decisions being taken in the name of children. He said the CLAP has designed Street Law Programme under which children play the role of messengers of their right, which is akin to child-to-child programme. He discussed the laws that are available in India to protect the Best Interest of Children in the early childhood. He felt that there is a need to have a comprehensive plan for issue specific needs of children. He concluded with the statement that we have traversed the long way from the basic needs of the children to the normative rights, which endow children with entitlement in a framework of law.

**Tom Olsen**, the State Representative of UNICEF in Orissa in his address as the Chief Guest brought to the attention of the participants the State of World's Children and the role being played by UNICEF as a multi-lateral international agency. UNICEF works closely with the Govt. to help it out in addressing the issues of children. He said, with the Convention on the Rights of the Child in operation, the State is under obligation to the UN Committee on Child Right to make periodic report so that performance in relation to achievement of goals set forth in CRC can be realised. He said children have the right to participation, which actually helps in realising the rights in its totality, but we always carry the impression that children cannot take decisions about themselves. Similarly, right to leisure is another important right, which always has a positive impact on the growth of children.

The National Co-ordinator of FORCES National Network, **Ms. Bullu Sarin** shared the experiences of FORCES in advocating for rights of young children. She said at present ICDS is the only service available for childcare in India. The schemes relating to crèche under National Crèche Fund and Scheme for working and ailing mother does not even reach to children living in most difficult circumstances. She said FORCES as a Network is committed to the survival and development of young children particularly of women working in the informal sector. Recognising that all underprivileged women are workers and carry the triple responsibility of bearing the children, household task and earning, FORCES identifies the lack of child care support as a critical factor which impacts the health and development of a children and increases the poverty and hardship of the families. She lamented that some of the hard facts, which persuades FORCES to take an active advocacy is that about 12-15 crore women work in the unorganised sector. 5.5 – 6.5 crore children under 6 years of age are in need of childcare services. 53% of all children under 5 years of age are malnourished. 88% of all women are anaemic, less than 15000 crèches are run under Govt. Schemes while the need is for 800,000 crèches.

FORCES believes that a strong intervention is required during the special vulnerable period of pregnancy, birth and early child caring when the needs and rights of women and young children are closely intertwined and continued to be show through early childhood. Maternity and childcare support is seen as a major strategy to brake the cycle of poverty. Day-care and Crèches have implication for child survival and development, women's health, increased economic productivity and women's empowerment, school entry and retention especially for the girl child, prevention of child labour, child prostitution and child abuse and above all an equitable development. FORCES believes that tinkering with programmes will not bring about any fundamental change in the situation of women and children. A holistic approach with a multi pronged strategy is necessary that includes Day-Care Services, Food Security, Maternity Entitlement, Social Security, Education and adequate health care systems are required. There is also a need for a law to protect rights of maternity and early childhood backed by a holistic national policy and adequate budgetary allocation. The FORCES demands inclusion of Child Care Services in the Minimum Needs Programme, Allocation of a fixed percentage of the GDP (1%) for the child care support, Strengthening of ICDS and universalisation of child care services, Recognition of importance of the child care workers in the protection, survival and development of young children, Decentralisation of child care services, Flexibility of models of child care, Inclusion of child care as a part of all programmes for women and development, Reviving of primary health care systems, Maternity entitlements for all women, Recognition of early child care and development as a vital component of education and Quality in pre-school and its proper regulation by Law.

A large number of children are discriminated against on the basis of birth, socio-economic status of the families, caste and religion. Gender based discrimination is also a significant feature of Indian society. And these sections constitute the majority of India's children! The Infant Mortality Rate are highest among these groups of children, the percentage of Low Birth Weight babies are predominantly from amongst this group; children suffering from varying degrees of malnutrition are also from this group. Illiteracy is also the highest among these children and they form the bulk of child labourers of Indian society.

Some of the programmes for the young child are derived from labour legislations pertaining to factories, mines and plantations, construction workers. These are Plantation Labour Act, The Factories Act, and The Mines Act etc. While these provide for crèches and child-care services, in reality these hardly exist. The number of crèches under existing crèche schemes is about 23000 whereas the need is for 800,000 crèches to cater about 22 crore women working in the informal sector and in dire need of child care services.

The status of the mother is inextricably linked to the status of the child. The vulnerable status of the mother can be seen from the fact that the Maternal Mortality rate in India is 660 per

100000 births while there are statutory provisions for maternity entitlements under the Maternity Benefits Act and the Employees State Insurance Act. These are applicable only to a small percentage of women working in the organized sector who constitute 17% of the total women workforce. The overwhelming majority of women who work in the informal sector are totally denied of any kind of maternity entitlements. These women do not even get any breaks for breast-feeding of the child.

The major programme of the Government of India is the Integrated Child Development Scheme (ICDS) which caters to about 2 crore whereas the need is for 6 crore children. The ICDS is the only integrated programme for the young child and covers health, nutrition, early childhood care and pre-school education and convergence of other supportive services such as safe drinking water, environmental sanitation, women's empowerment, non-formal education and adult literacy. The ICDS caters to children in 0-6 years age group. However, the ICDS excludes a large population living in urban slums, villages & settlements in border areas, non-revenue paying hamlets as well as increasing number of migrant workers.

As of March 2002, there were 427,862 Anganwadi Centers providing services. The number of beneficiaries in the 0-6 years age group who received supplementary nutrition were 31,503,764 and the number of children who went through pre school education were 16,655,533.

While the ICDS has had a degree of success in reaching to about 231 lakh children and 49.23 expectant and lactating women, evaluation of the ICDS programmes point out to certain significant lacunae. There have been significant systemic and infrastructural inadequacies, which prevent the scheme from delivering the required results. The limitations include poor outreach to the under 3s, low priority for pre-school education and lack of day care services; this, therefore, excludes a large section of women who are daily wage earners and children of artisans.

The most disturbing lacuna pertains to the status of the childcare workers (Anganwadi workers) of the ICDS centres. The paltry wages that are disbursed to these workers, the lack of recognition of them as workers, the onerous duties that they have to perform which include responsibilities of other government departments prevents the anganwadi worker from performing the actual tasks that they are supposed to carry out.

One of the aims of the ICDS programme is Convergence. The programme is supposed to ensure convergence of supportive services such as safe drinking water, environmental sanitation, women's empowerment programme, non-formal education and adult literacy. However, the reality at ground level is quite different and there is hardly any evidence of such convergence.

The very fact that persistent demands from various civil society organizations for universalisation of ICDS shows that lack of universalisation is indeed a major shortcoming. Another demand has been for decentralization of ICDS programmes, i.e. the responsibility for implementing ICDS to be handed over to local self-governing institutions with the requisite financial resources. This demand is meant to ensure greater efficiency and sensitivity to the culturally diverse landscape of India.

The flip-side of a certain lackadaisical approach regarding the needs of majority of Indian children is the galloping privatization and commercialization of health, education and food security which further deprives the majority of the marginalized while privileging a small minority, thus leading to greater polarization in Indian society.

There are two serious issues regarding the Right to life. One of them pertains to very survival of the girl child. There has been a drastic decline in the female- male sex ratios in 0-6 age

group over the last decade. The decline is from 945 females to 1000 males in the Census of 1991 to 927 females to 1000 males in Census of 2001. While these are all India figures, in some states/regions the ratios fall to 886. This masculinisation of sex ratios points to deep seated discrimination against the girl child which extends to denying her the right to be born. The birth of girls is being prevented and girl infants are dying. Female feticide is increasing despite the Pre Natal Diagnostic Tests (Prevention) Act 2002. Pre- birth sex selection tests are on the rise. Punishments are not stringent enough for those responsible.

These skewed sex ratios and related population imbalances portend serious social strife in the future. These have been further compounded by an insensitive population policy, which pushes for a two- child- norm. The consequences of this have been to further endanger the survival of the girl child in a society, which is deeply and harshly patriarchal. Some of the states, which have laws to implement this norm, are of Uttar Pradesh, Himachal Pradesh, Andhra Pradesh and Maharashtra.

The second major issue, which pertains to the Right to life, is the Infant Mortality Rate (IMR), which is a staggering 76 per 1000 live births in India. It is important to note that if the IMR is disaggregated by gender, caste, tribe, region, the IMR goes much higher to over 100 per 1000 live births among the Scheduled Castes and Scheduled Tribes. If gender is added to this structurally based vulnerability, the picture becomes even more dismal. It is important to reiterate that these sections are the most vulnerable sections of Indian society and they constitute 25% of India's population.

Nutrition security is a basic right but millions of children lack protection against hunger. Existing nutrition programmes are grossly inadequate and do not reach the children in need. The annual death drama in Melghat, predominantly tribal area in the state of Maharashtra has recently brought the economic and social angle of malnutrition where poverty stricken families are forced to go out to seek work for paltry wages and leave their infants in the care of siblings.

The various socio-economic trends of the recent years have had and continue to have an impact on the situation of children. Various policies, laws and schemes have been introduced and/or modified and the implications of these have to be analysed with the interest of children in mind. There are two contradictory trends. On the one hand, various international conventions and covenants (The CRC, CEDAW, Millennium Development Goals, Human Rights Convention, ILO Maternity Protection Convention 183 etc) are being put in place while social and economic policies at the national level are prioritising the market economy, privatisation and the withdrawal of the state from the social sector. This renders the vulnerable majority of children and their families even more vulnerable. Over the last decade and more, the state's budgetary allocations to health, education, public distribution system, sanitation, drinking water and specifically the commitment to provide nutrition to the children in need have declined in real terms.

This total budget allocation of just 2.3% is an insult to children. Poor allocation of needed resources, poor expenditure of available allocations, some faults in targeting most needed actions – all these have undermined good intentions. A more negative influence has been the pervasive fallout from the shift in national investment away from state supports for social development. 1990s decade was meant for children's rights but it also launched the era of globalisation in India and ushered in a neo liberal economic agenda.

The impact of structural adjustments has sharply reduced the capacities to families to fend for themselves. The 10<sup>th</sup> five-year plan is the first expression of how India proposed to address the reality that without pro-poor guarantees the rights of children cannot be secured. The plan document acknowledges this when it says that state subsidies need to continue and such

supports must address the early childhood care particularly of the majority of Indian children who are vulnerable.

Ms Sarin concluded her presentation with the statement that when the field situation of children are addressed in a right based approach the children may benefit from the schemes that are being implemented for their development.

As the chair of the session, **Justice Sarojkanta Mishra** made a reference about the constitutional protection given to children. He elaborated various provisions particularly Article 15(3) of the Indian Constitution which enables the State to make special provision for children which cannot be held as discrimination. As positive discrimination can be made in favour of children therefore State must undertake special programme for improving the quality of life of children. He said after such constitutional sanction and in the backdrop of CRC a State cannot take the plea that it has no responsibility with regard to the poor condition of children. He also said in India the High Court at the State level and the Supreme Court at the apex level are taking pro-active role to protect the Best Interest of Children, which is viewed as judicial activism. In fact the CRC itself desires that the States should take appropriate measure to reform its legislative, which is responsive towards children. When a right based approach is given to needs of children then the judiciary will be in a convenient position to come to the rescue of children whose rights are violated.

At the end of the inaugural session, the vote of thanks was proposed by **Bikash Das**, Executive Vice President of CLAP and the Team Leader of In Defence of the Child Project. He attended the programme in his capacity as the Advisor of the Commissioners of the Supreme Court of India on Food and Work. In course of his address he said a number of schemes have been contemplated as social security measures even for the children who are in their early childhood. He referred some of the schemes like Maternity Benefit Scheme which is a central scheme to provide financial assistance to women who are pregnant. The assistance given under Maternity Benefit Scheme is aimed at providing adequate nutritious food to expectant mothers which is given according to the direction of the Supreme Court at least 6-8 weeks prior to the delivery. Similarly, under the Mid-Day Meal Scheme cooked mid-day meal is being served with the expectation that a child attending a Govt. primary school should get at least 8-12 grams of protein and 300 grams calorie every day. Apart from it Integrated Child Development Scheme is being made universal to cover all eligible children. There are similar other schemes like Annapurna Anna Yojana, Antodaya Yojana which provides below poverty line families with rice as a matter of food security. He mentioned that in these social security schemes there are provisions for crèche services like under Sampurna Gramin Rojagar Yojana crèche for working mother has been contemplated. He expressed concern that in spite of a dozen of very effective schemes there are allegations of its improper implementation as also there is deficiency in terms of reach out and coverage. He emphasised on greater accountability and transparency in respect of such schemes. He also referred that the Local Area Development Funds given to Member of Parliament and Members of Legislative Assembly, popularly known as MP-LAD and MLA-LAD hardly used for purposes of development of children. He expressed hope that in a right based approach the nation will be able to create facilities and opportunities for holistic development and growth of children. He proposed vote of thanks to all the speakers and participants for their positive gesture to take part in the interface.

**B. Technical Session:** Immediately after the inaugural session, after the tea break, the technical session was started with the following panellists on the dais who were supposed to discuss the topics given besides the name of the panellists:

1. Prof. P.K. Sarkar, Head of P.G. Department of Law, Utkal University:  
Topic – Legal Aspects of ECCD.
2. Bikash Das, Advisor to the Commissioners of Supreme Court on Food and Work:

- Topic – Rights of the Child and ECCD.
3. Inderjeet Khurana, Secretary, Ruchika Social Service Organisation, Bhubaneswar:  
Topic – Role of NGOs for Securing Rights of Young Children; the experience of Ruchika Schools in Railway Platforms.
  4. Prof. Pratap Rath, Director, Child Line, Orissa:  
Topic – Civil Society Action for Safeguarding Interest of Young Children; experience of child line in Orissa.
  5. Lalatendu Acharya, Project Officer, Advocacy and Partnership, UNICEF, Orissa:  
Topic – Upward and Downward Advocacy for Protecting Young Children.
  6. Bulu Sarin, National Co-ordinator, FORCES National Network, New Delhi;  
Chair of the Session.

The Chair of the Session **Ms. Bullu Sarin** at the beginning suggested that due to shortage of time the first two topics will be discussed simultaneously with later 3 topics, instead of making separate presentation. The house also felt that when questions relating to law will come during presentation of 3 subjects then the clarification by legal experts would actually help.

Accordingly the presentation started from serial no. 3 on the title Role of NGOs for Securing Rights of Young Children; the experience of Ruchika Social Service Organisation and one of its wings called Ruchika School, Bhubaneswar in Railway Platforms. As the speaker on the subject **Ms. Inderjeet Khurana** shared her experience about holding platform schools in railway stations for street children and rag pickers. The experiment of Ruchika School started in the year 1985 in Bhubaneswar Railway Station. The School covers children in the age group of 3-14. She said most of children belong to slums around railway station. Therefore, the Activists of Ruchika School visit such slums regularly to interact with parents and more particularly with women. At present the school covers 4000 nos. of children. It is an innovative work as it addresses a determinant class of children who are highly neglected and cut off from mainstream. Most of the women of these slums work as domestic servant, daily labour and are engaged in all type of hazardous work in Bhubaneswar city. On the other hand the male members spend their income in taking liquor. Such condition leads to poverty and low income in family; therefore, the Ruchika School also takes care of women empowerment to enable the families to nurture their children properly.

As a panellist **Dr. Pratap Rath**, a professor of Psychology in Utkal University and Director of Child Line shared his views regarding another innovation concerning children in the form of Child Line, a 24 hour toll free phone service where children can avail support if they are in danger or life risk. It is a scheme sponsored by Ministry of Social Justice and Empowerment, Govt. of India. It is functioning in 55 places in India. So far as Orissa State is concerned in a selected area the scheme has been launched. The areas are Cuttack, Bhubaneswar and Puri. The Child Line service offers Trauma Counselling, First Aid, Rehabilitation, Medical Support, Legal Advice and Aid and Psychological treatment, Rescue Operation too. If a child makes a call then there is no charge for it and immediately after receipt of call a team of activists reaches on the spot for the rescue of the children.

Speaking on the topic of Upward and Downward Advocacy for Protecting Young Children, **Lalatendu Acharya**, Project Officer, Advocacy and Partnership, UNICEF, Orissa observed that there is a need for societal debate on the topic of ECCD and its relevance in the present context. The efforts of NGOs, which are invariably innovative, need to be documented and shared with strategic audience in the civil society. While there is a need to interact with secondary stakeholders at the policy level for necessary changes in the policies concerning young children it is not of less importance to advocate with primary stakeholders in a downward advocacy. As far as young children issues are concerned the family is a primary unit, which has a tremendous impact for change in the life of children. It cannot be over emphasised to consider the family as the fundamental unit for growth and development of

children. When advocacy on ECCD is discussed one has to consider advocacy at different dimensional levels like Govt. at the Centre, Govt. at the Provincial level and the local self-govt. institutions like Panchayat and Municipality. For this purpose there is a need to understand each of these institutions jurisdiction and functions. Besides, a proper documentation of case studies with the local situation, context and issues are required. There are several methods of holding public advocacy on ECCD. Advocacy strategy like holding Interfaces, Social Audit, Public Hearing, Study and Research Findings always bring support to the cause, which we advocate. He also added that the UNICEF does take up advocacy with Govt. authorities in appropriate fora. Since the role of UNICEF is different as a multi-lateral body therefore it can suggest the host Govt. where there is a demand from the Govt. The documents published by UNICEF including that of the State of World's Children always carries importance because these are tools for advocacy for child right groups. A well planned advocacy strategy can bring about necessary changes in the life style of young children as a successful advocacy impacts Govt. institutions to get engaged in shaping the future of the children. As an important aspect of advocacy the NGOs who are engaged in advocacy and lobby must be equipped with fact and figures which are not exaggerated but speaks the truth always adds an extra point in support of the case.

**Bikash Das**, Advisor to the Commissioners of Supreme Court on Food and Work, dealing with Rights of the Child and ECCD stated that among several argument in favour of young children and ECCD, the highly acceptable argument is right based approach. With the adoption of Convention on the Rights of the Child and earlier Declarations concerning children the right-based approach receives legal sanction, which is primarily a matter of international law. The State Parties to the Convention are now under legal obligation to take all measures to realise the Rights of the Child. Under the Convention the State Parties are required to submit periodic report, which keeps the State Parties accountable to the UN Committee on Child Right.

The subject of Rights of the Child has assumed great significance in the contemporary society, particularly with the adoption of Convention on the Rights of the Child by the United Nations and it has witnessed remarkable progress in recent times.

The UN Convention on Rights of the Child came in to operation in the year 1989. This is one such Convention, which is almost universally ratified by Nations across the Globe. India also ratified the Convention as a State Party in the year 1992. The CRC has helped create a positive international legal environment on child rights. Yet, a strategy of rights at the international level an obviously impact on children only if it is translated into action at the national level. Unless implementation receives priority, the Convention will remain merely a manifesto of political intent.

So far as CRC is concerned it entails an obligation on the State Parties to undertake appropriate administrative and legislative measures for the implementation of the Rights recognised by the Conventions. Thus fundamentally it is a matter of Governance within the jurisdiction of a country to put Rights in an appropriate framework. India is also under obligation to incorporate the provisions in its Constitution, Laws, Legal System and Legal Process for the proper manifestation of the Rights. A bare reading of the Indian Constitution particularly Article 253 suggests that State can enact Laws giving effect to International Treaty Obligations. However, it seems at this moment after almost one decade of ratification of the Convention that a long way has to be traversed to fit the provisions of CRC in the Framework of Law for pro-active and efficient Governance.

However we, as a nation have repeatedly failed our children. We have not been able to meet their basic needs and have been unable to ensure them a quality of life that they deserve. We have been treating them as passive recipients of adult benevolence.

All the Rights conferred on children by CRC are qualified by a basic principle in elucidated in Article 3 of CRC e.g. “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration. But how do we determine the Best Interest of Children?”

Implementation of the Convention is intrinsically connected to international law on treaties. The Vienna Convention on the Law of Treaties (1986) has codified the main norms of international law. Principles of international law apply within a country by a process of reception into municipal law. Legal systems sometimes recognise that international law as represented in treaties becomes part of municipal or domestic law by immediate reception, so that a treaty becomes automatically binding on domestic courts. Such legal systems recognise the supremacy of international law over domestic law, and subscribe to what is described in international law a theory of monism. According to another view, international law and domestic law are two systems. A domestic court is only bound by treaties if the state concerned enacts legislation in conformity with its treaty obligations and there is a transformation of the treaty into domestic law. The English legal tradition on recognition of international law follows the latter view, which is described as a theory of dualism. Parliament or the legislature is therefore required to transform or implement treaty provisions by enacting local statutes, so that they become part of domestic law and bind domestic courts in the country.

The framework of rights articulated in the Convention does not entail a departure from the basic concepts of family privacy and the state’s role as *parens patriae* in the care and development of children. The Convention confers (a) rights for survival and development, (b) protection from abuse and exploitation, and (c) participation rights. The first two fall within the traditionally accepted area of child welfare, but are given a new dimension. Survival and development - the traditional areas for policy planning and intervention in many countries - are recognised, but equal weight is given to the aspect of protection. There is a movement away from the perception of the child as a beneficiary of privileges conferred at the discretion of parents, the family, the community and the state towards a perception of the child as a repository of legal rights under international law. The right of participation incorporated in the Convention involves the development of existing legal concepts in some countries, but given priority to the idea that children have a right to participate in matters that concern them or their community as they mature towards adulthood.

A national framework of law could be a possibility for the implementation of the provisions of the Convention with special reference to Survival and Development Rights of the Children. This can in actual practice translate the basic needs of the children into normative codes - exploring entitlements of children in a right based approach. Such a framework of law would go beyond the very general constitutional statement by specifying the implementational aspect of the Convention on the Rights of the Children. Such a framework would contain rights and remedies, vicarious liability and accountability, institutional mechanisms, list of existing legislation relevant to the Convention on the Rights of the Child, an enumeration of national vision, mission, strategy, goals and objectives, a timeframe, indicators of achievement and benchmarks against which progress could be measured, monitoring arrangements etc. The main aim of the framework of law is the formulation of political and legislative commitment to accomplish the full realisation of the Rights of the Children.

The Convention on the Rights of the Child has already proved to be an effective framework for international action. The Convention established social and economic rights-the right to survival, early development, education, health care and social welfare support. But it also covers civil and political rights. These include the right of the child to a name and nationality, to freedom of expression and to participation in decisions affecting his or her well-being.

Further rights include protection from discrimination on grounds of gender, race or minority status, as well as from sexual and other forms of exploitation.

In India today, millions of children live in conditions of acute deprivations with inadequate access to basic health care, nutrition and safe drinking water, which probably results in many more deaths than famine, flood or war. This also gives rise to various related social problems like destitution, juvenile delinquency, drug abuse, beggary, immoral traffic among women etc. Policy makers have long ignored the special needs of such children.

A child is born innocent and if nourished with tender care and intelligent concern for its development will blossom, with physical, mental, moral and spiritual, into a person of stature and excellence. The ideals and goals project in the UN instruments are a global gain. But shaping children's future by law, harmonising its life with the rights to health and happy environment has a long way to go.

**Bulu Sarin**, National Co-ordinator, FORCES National Network, New Delhi, Chair of the Session remarked that there are several good practices by NGOs in different level with regard to giving expression to ECCD in its practical implementation. She said the CRC also identifies NGOs as one of the key actor in the field of securing rights of the child. NGOs bear enormous responsibility in addressing issues of young children. Sharing her recent experience in a fact finding mission to Melghat of Amaravati District of Maharashtra State where several children died due to alleged malnutrition and starvation, she expressed concern that unless such issues of young children are highlighted for debate in the society we may loose several of our young children who are deprived from basic needs for life. Elaborating her views she said pockets of malnutrition are distributed all over India with a number of root causes associated with it. Out of 15000 children in Melghat area 985 are suffering from grade 3 malnutrition whereas 105 comes in the category of grade 4. Chronic malnutrition is a fact of life. Korku tribe whose cultural practices have partly separated them from the fast changing outside world mainly inhabits the villages in Melghat. They are mainly cultivators of smallholding or landless labourer, hunting and gathering in the forests also contribute to their subsistence. The Melghat Tiger Project has displaced 22 villages out of 315 villages of the area. This has restricted their accessibility of resources necessary for their livelihood, this deprivation had not been compensated by expansion of enough employment opportunities through employment generation schemes of the Government, the formation of self help groups among women has just been initiated. On this economic basis lies the superstructure of a tribal culture that refers to cling to primitive practices like early marriages, reluctance to family planning, illiteracy and absence of health awareness, the early marriages are resulting in premature underweight child births to minor mothers. The deaths of the children are leading to insecurity, which in turn demotivates the community to take family planning measures.

So many pregnancies are leading to anaemia and malnutrition to mothers, this viciousness of life cycle requires attention.

The commitment of the social workers and NGOs trying to make a difference in the life of children but the lack of convergence of the effort and participation of the local people was also visible.

**C. Open Forum:** Just after the Technical Session, an Open Session was started giving opportunity to participants to share their views. As, a majority of the participants are members of FORCES the discussion obviously concentrated on crèche facility and childcare services. The participants shared their views about the problems they encounter during grassroots intervention and the prospect that are available which can be harnessed to utilise the existing resources for holistic development of children. The participants from different mining pockets observed that in spite of their effort the mining owners do not arrange crèche facility even

though it is a legislative requirement under Mines Crèche Rule. Sri Bhakta Batsal Mohanty, representing Orissa Mining Area Peoples Action Network stated that the mining operation in Keonjhar district only creates health hazards to the local tribal inhabitants but nowhere the mining owners ensure their social responsibility by creating conducive environment for children.

Similarly, Sri Madhusudan Das of Abhiyan observed that family has the fundamental responsibility for the upbringing of the children. However, Due to indiscriminate growth of liquor shops in rural areas male members spend most of their income in such habit. It also creates tension within the family environment. Unless Govt. makes pro-active measures to control indiscriminate growth of liquor shops the problem cannot be resolved. The net result will be that the family cannot invest its resources for the growth of children. Liquor and Drug addiction is rampant in rural societies now a day. If the Best Interest of Children are to be protected such issues are also required to be dealt with.

A consensus was there in respect of the non-performance at the level of public authorities and the way the grievances of people are turned down by District Collectors. Everybody felt the present system of governance needs immediate reform as the institutions and laws are non-responsive and dormant. It emerged from the Open Discussion that the issue of governance has a significant role, as a paralysed system of governance cannot help in securing the rights. Ms Mamatarani Pattanaik, a Researcher of Utkal University brought to the attention of the participant how the social security measures are being mis-utilised in the absence of any proper monitoring of such schemes by the higher authorities. Ms Gita Sahoo of YWCA of Orissa Chapter referring to the ICDS said that there is poor implementation of the Scheme and also there is poor reach out as per the figures. But it is hard to approach any authority, as it is nobody's responsibilities. There is no grievance redressal mechanism exit for ICDS. If it is a right then there should have enough institutional arrangement to hear the grievances of the beneficiaries. It is difficult on the part of the beneficiaries to approach High Court or Supreme Court if they have a grievance relating to ICDS. When there is no access to ICDS how one can presume to be able to have access to High Court and Supreme Court to get the right implemented.

Mr. Sanyasi Behera, General Secretary of Orissa Association of the Blind expressed dismay over the non-implementation of Person's with Disability Act as a result of that the disabled children are deprived of their entitlement. He shared his opinion with regard to his experience in a School for Disabled Children where only because the Management was run into controversy the District Collector took the drastic step to close the School. Showing his despair about the way the interest of disabled children is handled suggested that disabled children should have a special approach in ECCD as special category of children. No common formula to address ECCD will help disabled children. He further suggested that these disabled children are differently able therefore they should be treated differently in a framework of ECCD.

Ms. Sophia Seikh of Society for Weaker Community raises the special needs of minority communities and the vulnerability of muslim children. She said apart from the wrong interpretation of Shariat for which women and girl children suffer there is the condition of poverty, which does not allow the children of muslim community to grow properly.

In another dimension Sri Ramesh Mandal, Co-ordinator of VASUDEVA Network which is a collective of organisations working on disaster said the vulnerability of children in case of disasters like cyclone, drought, flood and fire affliction always have an adverse impact on children. Such children do need special approach in ECCD to prevent trauma, malnutrition, physical disability etc.

Sri Ramakant Satapathy, Co-ordinator of Orissa FORCES expressed concern over IMR in Orissa which is highest in the Country. He referred to the recent incidence in Olobo village of Nursingpur Block of Cuttack District and Badatemera Gram Panchayat of Jharigaon Block in Nawarangapur District where children are died due to non-availability of immunisation and malnutrition. He requested that the fact finding committees of both Govt. and Non-Govt. should immediately make their report public for a debate apart from immediate support to deprived communities to prevent any further death due to in access to health and nutrition. He further added that every year 86000 Infant die in Orissa.

T. K. Anthony of Orissa Children's Orphanage emphasised on institutional care in certain situation where there is no one to look after abandoned child. He said exposing child including abandonment is a crime under Indian Penal Code but so far there is no instance where the prosecution has initiated any cases against anybody. Even though family environment is always a better choice but exploitation associated with integration in family are also prevalent.

Partha Sarathi Sahoo Co-ordinator, Campaign Against Child Labour (CACL) raised a vital point that unless primary education is made accessible for all eligible children the interest of girl child will be sacrifice within the family environment due to the cultural ethos of society that a girl child is not meant for attending school but to attend the small kids of the family. If enough child care measures are undertaken then the best interest of girl children can also be protected. He said now that primary education is a fundamental right State should create educational opportunity for children particularly in accessible areas. He expressed concern on the fact that the 86<sup>th</sup> constitutional amendment act left out 0-6 age group from its ambit inspite of so much of civil society demand.

Sri Chittaranjan Mohanty of CLAP shared his findings of a study about situation of children below 5 years living with mother prisoners in jails for no fault of theirs. He said in spite of continuous lobby with Govt. there are no enough childcare measures within the jail for such children. Even, he stated that the medical facility available in central jails like Choudwar does not include medical treatment for children.

Sri Purusottam Sahoo of CLAP added that Children of prostitutes, HIV/AIDS parents and virulent diseases like leprosy need special attention due to their vulnerability. Sk. Quraish of Right Path to Education Project stated that in rural areas Dalit children as a social class often deprived of their entitlement concerning child care. He said there are several examples where access to dalit children are denied due to the very fact of their caste in spite of constitutional provision prohibiting untouchability. Ms. Pravati Nayak suggested that there is a need for networking approach among NGOs dealing with different categories of children to broad base the intervention. Similarly, Ms. Sucharita Mishra said that a proper mapping of NGOs about their area of intervention would help measuring the impact of intervention made by NGOs. Sri Bikash Das mentioned that even the present move of Govt. to contemplate new laws to regulate NGOs will have adverse impact on child right because of the obvious reason that many good NGOs will end up in approaching Govt. officers at the district level for a permission for any of their activities. In a liberal democracy a vibrant civil society is necessary. Therefore, a conducive environment is required for functioning of civil society. An independent civil society can impact on development of children along with many other issues.

Finally, after a thorough open deliberation the participants have come up with following agenda for action:

**Declaration:** Looking at the present State of Young Children, where the Rights concerning Survival, Development, Protection and Participation are merely black letter laws and meaningless for the realisation of the best interest of the young children, the civil society can

not act as voiceless spectators. The situation of young children in Orissa demand that the civil society should play its legitimate role within the framework of rights. Bearing in mind the issues having bearing an adverse impact on children, resources available, capacity to address the issues and the reach out of grassroots NGOs the following areas have been identified as priority areas for intervention with strategy to be undertaken:

#### **ISSUES:**

- \* The IMR , Under 5 Mortality Rate, MMR and Malnutrition level are a major concern.
- \* Poor reach out in matter of Social Security Schemes like Maternity Benefit Scheme, Mid-Day Meal in Primary Schools, Balika Sambrudhi Yojana.
- \* Universal coverage in respect of ICDS.
- \* Adequate Crèche Facility and child care services for all eligible young Children.
- \* Special provisions in Mining, Plantation, Factories, Construction Work and Bidi and Cigar Work.
- \* Universal Civil Registration of Children.
- \* Universal Immunisation.
- \* Greater access to Public Health Systems, provision for safe drinking water and sanitation as well as hygiene.
- \* Special plans for children living in difficult circumstances.
- \* Focus on Girl Child.

#### **STRATEGY:**

- \* Strengthening an effective and vibrant Networking among civil society actors to address issues relating to young children and ECCD.
- \* Fact-finding and Documentation in cases of deprivation from entitlement.
- \* Social Audit of public policies and its implementation.
- \* Innovative and culturally sound activities to be undertaken by NGOs at the grassroots level for a change at the household level.
- \* Investment in Social Capital.
- \* Regular communication for exchange of views.
- \* Lobby the Govt. for adequate allocation of Budget for young child and ECCD.
- \* Legal action for non-enforcement of legal entitlements.
- \* Organising ECCD and Law Interfaces in relation to Human Rights, Democracy and Solidarity.

## Chapter-X

### Learning

The Interface on Legal Aspect of Early Childhood Care and Development gives rise to a set of learning about laws and policies to practice with regard to young children, which are succinctly described below:

- \* ECCD is in itself a major and important Rights of Children in their early childhood. However there is lack of conceptual clarity relating to ECCD framework both at policy level as well as at the level of practice. It includes the definition, age, areas of intervention and also responsibility concerning the Best Interest of young children. Early Childhood Care and Development is understood differently by different people. Very often the definition emerges as everything that is required for holistic growth and development of children. It is considered as a comprehensive approach to the issues of child survival, development, protection and participation. There is no simplistic proposition that can provide a break down of each of the support service required for a proper strategy. Broadly the entire framework of ECCD is ambiguous and difficult to measure.
- \* The laws, policies, plans and strategy concerning ECCD do not take a convergence approach. Very often each of the issues is undertaken in isolation instead of giving a sectoral approach to the ECCD in its totality. As a result of that there is a wide gap between the issues and strategies as well as actual realisation.
- \* As access to health systems, adequate nutrition, timely immunisation and child care in crèche and at the pre-primary level are generally addressed by various schemes and policies without any statutory backup, therefore, the entitlement aspect is yet to be understood in proper perspective. It has a direct impact on right-based approach to the issues of young children.
- \* Other than family, NGOs are also a major player in ECCD. However, the NGOs have not been able to perceive their role in a comprehensive formula to address ECCD but largely focus on one or two aspects of ECCD like organising crèche, providing health care, rehabilitation of children in institutional care, civil registration, promotion of breastfeeding, providing pre-primary and primary education etc. But a vast array of activities around ECCD is being carried out in various forms starting from service-oriented measures to advocacy initiatives. The support given by Govt. to NGOs for various measures, which has a direct bearing on ECCD, is not adequately enough. Often small grants for a limited period are given which is neither sufficient nor adequate to actually undertake activities. NGOs are very much compelled to receive the grant as otherwise the activities will come to a stand still. As far as ECCD is concerned most of the NGOs at the grassroots level who receives Govt. aid merely play a supplementary or complementary role instead of a comprehensive and innovative work.
- \* The issues of young children relating to ECCD is intertwined in the social order in such a way that it hardly receives attention from media, judiciary and even from the policy makers. The Govt. response to ECCD in its complete form is also negligible. Even though IMR, Malnutrition and Disability are some of the issues, which are very much in the discourse around development, when priorities are fixed, these points get the lowest rank.
- \* In spite of several schemes pertaining to young children there is a massive gap between policy and actual implementation. It is always affected and hampered in the absence of proper budgetary allocation. With a variety of schemes relating to young children Govt.

keeps itself in a safe side to show its responsiveness and performance but there is no accountability with regard to enforcement of schemes.

- \* There cannot be a single formula to address childcare and education. Different categories of children like girl children, disabled, underprivileged children particularly belonging to minority communities and dalit (social class) as well as tribal need separate approaches in a programme of child care and education. This is so for girl children in traditional society, which does not want to invest in girl children.
- \* ECCD is a governance issue. A proper monitoring of progress and performance, benchmark for its advancement and institutional arrangement are important considerations for its effective realisation.
- \* ECCD is multi-stake holder responsibility in which family plays the pivotal role. But very often families are unable to provide proper opportunity for the holistic development due to their helplessness and disadvantaged position. Govt. bears enormous responsibility to enable such families to nurture their children in proper manner. NGOs and private sector are the major actors in realisation of the rights of the child.
- \* Investment in social capital helps the children and their family to have greater access to public health systems, social security measures, educational institutions and also protection within the community. The reciprocity within the community and with a network of civil society helps parents to reasonably assure their children care and protection.
- \* As far as Participation Right of children is concerned it is almost next to non-existence. In fact the ways and means to ensure participation of children in ECCD is yet to be explored in its fullest form. The only form of offering Participation Right so far is by giving opportunity to children to get involved in plays and games. But this is essentially the Right to leisure. At the same time the right to leisure is also hardly asserted by children particularly who live in difficult circumstances. In a rural society there is little opportunity and facility to get involved in recreation and play rather children spend time in traditional household work more often.
- \* There are various context exists in society where children live in most difficult circumstances like children of prostitutes, children living with women prisoners, children of unwedded mothers and now the new addition of children who are living with HIV/AIDS or whose parents are affected, therefore, face social exclusion for whom the facilities and opportunities are limited. Such children are deprived of their right to survival, development, protection and participation.
- \* A whole gamut of Rights need to be addressed under the framework of Right of Child in Early Childhood in order to secure the best interest of young children such as the Right to be Born Free, Infant Right to Breastfeeding both exclusive and extensive, civil registration of children immediately after birth, crèche facility, pre-primary and primary education, health, nutrition, immunisation and social security. The Framework should also cover Child Right to leisure and participation.

## **Chapter-XI**

### **Recommendations**

The participants of the Interface felt that there is a whole lot of activities need to be adhered to, at various level like at the United Nation level, International level, at the level of each country who have ratified the convention and finally both at the levels of NGOs as well as Private Sector for securing the best interest of the young children in a right based approach. The following recommendations have emerged from the deliberation:

- ★ A functional definition with achievable goals and measuring indicators for the framework of Rights of Child in early childhood should be contemplated bringing within it a comprehensive list of Rights covered under Convention on Rights of the Child that matter young child such as Right to be Born Free, Exclusive and extensive Breastfeeding, Civil registration, Childcare services in the form of Creche and Pre-primary education, Primary Education, Access to basic health services, Nutrition and Immunisation, provision for right to have leisure and participation of children etc. It should also include provision for institutional care, rehabilitation, adoption, custody and guardianship of children who need such special protection. Similarly, the interest of girl children and children with disability as well as HIV/AIDS need to be brought under the purview of the definition. Children living in most difficult circumstances should also be covered as a determinant class of persons who need special care and protection.
- ★ There should be a common standard for age of early childhood as it has implications in policy formulation and legislative measures. An age disaggregated approach need to be taken up within the broader definition of age of childhood for rendering basic services for care and protection of children.
- ★ An Optional Protocol/Declaration (or any other form recognised under International Law) on child right in early childhood should be developed keeping therein-specific steps to be taken by the State Parties to create facilities and opportunities for young children. A proper institutional arrangement should be made at the UN level for monitoring of performances of State Parties. Periodic Report about performance and advancement and general measures taken by state parties in respect of development of status of Young Children should be a principle in the optional protocol. Adequate scope should be given to civil society to submit alternative reports apart from periodic report to be submitted by State Parties.
- ★ A sectoral approach to the rights of the child in early childhood in its totality needs to be adhered to, instead of addressing issue specific areas in isolation. A well formulated strategic and comprehensive sectoral approach is desirable to realise the rights of the children in its entirety covering all categories of rights such as Right to survival, development, protection and participation.
- ★ The State Parties to the Convention on the Rights of the Child and the Declaration concerning a World Fit for Children should be given a timeframe within which State Parties will bring their laws and policies in conformity with the provisions of the Convention in relation to ECCD, young children and child right in early childhood particularly the Articles like Article 1, 2(1), 3(1), 3(2), 3(3), 4, 5, 6(1), 6(2), 7(1), 12(1), 12(2), 18(2), 18(3), 24(2), 27(1), 28(1), 28(2), 29(1), 29(2), 31(1), 31(2).
- ★ The role and responsibilities of Govt., NGO and Private Sector should be pronounced in such a way that there will be no overlap or controversy. Accountability of actors needs to

be redefined for measuring governance in matters of child rights. Governance indicators and measures need to be contemplated.

- ★ Each State Party needs to formulate country specific ECCD strategy bringing therein culturally viable and practically feasible policies, which are sound enough to be translated in to actual implementation. While formulating policies adequate steps should be taken to back such policies by statutory sanctions so that entitlements of young children can be secured in a right-based approach.
- ★ There should be proper and enough documentation of innovations concerning ECCD and Young Children by NGOs so that good practices in the area of young children can be replicated in different settings. Govt. should keep its door open to learn from the experiences of NGOs and incorporate such experiments of NGOs in the broader national policies wherever possible.

Annex: 1

**AGENDA*****FROM LAWS AND POLICIES TO PRACTICES  
PERSPECTIVE BUILDING ON LEGAL ASPECTS OF ECCD*****Venue: The New Marrion, Bhubaneswar.****Date: 30.08.2004**

<i>Time</i>	Programme	Peron Concerned
9.00 A.M.	Arrival	Participants
9.30 A.M.	Registration	Mr. Gadadhar Sahoo, Mr. D. Mantry and Pravati Nayak.
10.00 A.M.	Self Introduction of Participants	Participants
	Inaugural Session	
10.30 A.M.	Welcome	Mr. Gobinda Sethy, Advocacy Manager, CLAP
10.40 A.M.	Inauguration	Mr. Tom Olsen, State Representative, UNICEF
10.45 A.M.	Key Note	Mr. Shyam Sundar Das, President, CLAP
11.00 A.M.	Perspective Building on ECCD	Ms. Bullu Sarin, Co-ordinator, FORCES National Network.
11.15 A.M.	Address by Chief Guest	Tom Olsen, State Representative, UNICEF
11.30 A.M.	Vote of Thanks	Mr. Bikash Das, Executive Vice President, CLAP
	Chair of the Session	Justice S.K. Mishra, Former Law Secretary and Vice Chairman, SAT, Orissa.
11.35 A.M.	Tea Break	
	Technical Session	
11.45 A.M.	Legal Aspects of ECCD	Prof. P.K. Sarkar, P.G. Department of Law, Utkal University
12.00 Noon.	Rights of the Young Child and ECCD	Mr. Bikash Das, Executive Vice President, CLAP
12.15 P.M.	Role of NGOs for Securing Rights of Young Children	Ms. Indrajeet Khurana, Secretary, Ruchika Social Service Organisation
12.30 P.M.	Civil Society Action for Safeguarding Interest of Young Children	Prof. Pratap Rath, Director, Child Line, Orissa
12.45 P.M.	Upward and Downward Advocacy for Protecting Young Children	Mr. Lalatendu Acharya, Project Officer, Advocacy and Partnership, UNICEF.
	Chair of the Session	Ms. Bullu Sarin, Co-ordinator, FORCES National Network.
1.00 P.M.	Open Discussion and Plenary	Facilitator: Avdesh Yadav, FORCES National Network.
2.00 P.M	Lunch	

3.00 P.M.	General Body Meeting	FORCES members only. Facilitator: Ramakanta Satapathy, Co-ordinator, Orissa FORCES.
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