

## A REVIEW OF HUMAN RIGHTS OF TRIBAL CHILDREN: POLICY IMPLICATIONS IN THE GLOBALIZATION ERA

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Volume 11, numéro 2, 1998

URI : <https://id.erudit.org/iderudit/1100548ar>

DOI : <https://doi.org/10.7202/1100548ar>

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Éditeur(s)

Société québécoise de droit international

ISSN

0828-9999 (imprimé)

2561-6994 (numérique)

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Citer cet article

Gathia, J. (1998). A REVIEW OF HUMAN RIGHTS OF TRIBAL CHILDREN: POLICY IMPLICATIONS IN THE GLOBALIZATION ERA. *Revue québécoise de droit international / Quebec Journal of International Law / Revista quebequense de derecho internacional*, 11(2), 217–251. <https://doi.org/10.7202/1100548ar>

Résumé de l'article

Human dignity and integrity are the symbolic concepts at the centre of the ethical system comprising the social values that are the essence of human rights. The paper traces the Indian heritage of human rights and links this with the *Universal Declaration of Human Rights* and pleads that human rights are not a Eurocentric idea. Contrary to the prevalent notion among NGOs that the Child's Rights Convention is the only instrument which provides for the rights of children, the paper argues that the *Universal Declaration on Human Rights* provides a more holistic approach, as well as opportunities to the children from marginalized groups, particularly tribal children.

The paper is divided into five parts. Part one deals with the origin and cultural factors of human rights and the role of *Universal Declaration on Human Rights* in promoting and providing human rights of marginalized groups such as tribal communities. Part two deals with the situation of tribal children with particular reference to girls in India. Part three discusses the legal provisions and the effect of the CRC and *UDHR*. Part four deals with the micro level experiments and experiences, and, finally, part five with the policy implications for future action. The paper concludes with a note that strengthening grassroots democratic institutions is an important action, which needs to be on the agenda in the next millennium. The *UDHR*, rather than CRC and CEDAW, may play a more affirmative role because of their more holistic approaches, encompassing civil and political rights as well as cultural, economic and social rights. The paper also briefly sheds light on the effect of a market economy on tribal children.

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*By Joseph Gathia\**

Human dignity and integrity are the symbolic concepts at the centre of the ethical system comprising the social values that are the essence of human rights. The paper traces the Indian heritage of human rights and links this with the *Universal Declaration of Human Rights* and pleads that human rights are not a Eurocentric idea. Contrary to the prevalent notion among NGOs that the Child's Rights Convention is the only instrument which provides for the rights of children, the paper argues that the *Universal Declaration on Human Rights* provides a more holistic approach, as well as opportunities to the children from marginalized groups, particularly tribal children.

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Four thousand children of Korku died in Melghat, central India between 1993 and 1996; just four years time. Between 1980 and 1991, the Korku population grew by only 6,800 persons and almost 4000 children have died.

Eighteen per cent of all pre-school children have died since 1993 and hundreds may die this year. In 54 out of 300 villages, the male/female ratio is abysmally low and drops to 42 females for 100 males in 2 villages. The tribal girl child has certainly become an "endangered species" in this area.

Korkus are one of the oldest pre-Aryan tribes in India. They are forest dweller people and prefer to live in small distinctive, communities. Their access to forest resources for traditional nutrition and medicinal plants has been restricted since the declaration of Melghat as a reserved forest. Melghat is one of the richest treasure houses of gene pools but the Government's focus on commercial exploitation of forest wealth has eroded its bio-diversity. For fifteen decades the Korkus have suffered continuing extinction of their rights under both the colonial and free Indian government.

Over the years thousands of Korkus have lost their land to extortionist money lenders. Adding insult to exploitation, the Government has decided to evict about 8000 Korkus from their ancestral place.

## **I. Human Rights Background**

Even a most casual traveler in India quickly notices diversity; twenty major languages, of which fifteen are recognized in the Constitution, seven major religions and some 200 different ethnic groups, quite different to other inhabitants of the country. India has for centuries been a melting pot for many different ethnic and cultural groups. The other influential factor for India's next twenty years is its young population. Of a population of 846 million, 36 per cent – 304 millions – are below 15 years of age. A young population imposes certain constraints in terms of investment decisions, particularly regarding nutrition, health and education. This is one basic reason why today's India is full of life energy and hope. But is this hope shared by the tribal children of India?

Protection of its tribal (indigenous) population is considered to be a hallmark of any civilized nation. Growing public interest in tribal people and a long process of international negotiations involving indigenous organizations prompted the international community to proclaim 1993 as the International Year of the World's Indigenous People, and then the period from 1995 to 2004 as the International Decade of the World's Indigenous People, in order to focus on issues of concern to tribal people. Each of these gestures are important in the struggle for the recognition of the rights of indigenous people. These steps are all the more meaningful with the Fiftieth Anniversary of the *Universal Declaration of Human*

*Rights.*<sup>1</sup> The *UDHR* recognizes the inherent dignity of every human being, and sets forth in detail the rights to be enjoyed by all “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

It has been observed that during the past two decades in general, and after 1989 with the coming into effect of the UN *Convention on the Rights of the Child (CRC)*, particularly, no specific discussion on the problems of tribal children's situations and rights has been initiated. At least it has not received as much attention as it should have. In a country like India, where a sizable population is tribal and the child population is almost 36 per cent of the total population, it requires all the more attention. But more than this, the challenges of the new millennium, in light of the spirit of the *UDHR* is a more compelling reason to see what kind of future tribal children are likely to have. Following the spirit of the *UDHR*, the UN General Assembly's *Declaration on the Right to Development*,<sup>2</sup> for which all Third World countries and most other countries voted, is worth recalling.

Development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.<sup>3</sup>

On this basis, it seems fully justified to examine whether improvement is taking place in the well-being of the tribal population and particularly among the tribal children. It is also justified to ask whether the benefits of development are distributed in accordance with principles of social justice or not. The system of internationally recognized human rights norms constitutes the best guide to such an exploration.

Primary responsibility for the respect and protection of human rights rests with the government concerned. Whereas most human rights monitoring deals with accusations of government violation or neglect of human rights, it is, however, not the only one. As noted above, the *UDHR* calls on “every individual and every organ or society” to promote and respect the rights and freedoms including the *Declarations*.

As we discuss the fiftieth year of the *UDHR*, the question arises in our mind; hasn't the *CRC* taken care of children's rights? Certainly; the *CRC* has emerged as one of the most effective instruments of recent times and differs it from other comparable human rights treaties in a variety of ways. One of the most important is the emphasis on the need for more flexible and innovative approaches to implementation than has thus far characterized approaches of other treaties. In

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<sup>1</sup> GA Res. 217 (III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71 [hereinafter *UDHR*].

<sup>2</sup> Resolution 41/128, 04.12.1986.

<sup>3</sup> *Ibid.*, Preamble, para. 2.

this sense the *CRC* is unique, but the feedback we have received from the field suggests that the *CRC* is seen more as a legal approach document and that it presupposes the existence of some conditions in a given society whereas in actual practice it may not be so. The *CRC* presupposes:

- that democracy is the established institution in all the state parties
- that social security and “safety nets” prevail or will be introduced despite market economy and globalization effect
- that all the children in a given society are treated equally and that it is only a question of opportunities
- that the individual treatment of a child would ensure the protection of groups’ rights also (of some specialized groups such as children of indigenous communities).

One expert stated that, “But at another level it is equally true that an appreciation of the legal framework within which those principles have been proclaimed is indispensable.”<sup>4</sup> This is not to suggest that the *CRC* is not to be used for the promotion of rights of the tribal children. The purpose here is to draw the attention of the international community to the fact that the *UDHR* contains more sense of a more holistic approach as far as when dealing with some specific groups such as tribal children is concerned.

Further, the *CRC* also heavily relies on non-family actors for solving the problems of children. While this approach may be correct in cases of single parent children, street children or children in conflict with law but with a vast majority of people globally seeking solutions within the family set-up, such approach has severe limitations. The value of family is being recovered in Western culture.

In addition to this, the *CRC* also does not amplify the treatment of rights of indigenous children. An array of legislative and other formal measures of implementation will ultimately be less important and less effective than measures designed to inculcate the values enshrined in the Convention into the consciousness of the masses as well as the decision making elite. The *CRC*, to a great extent, ignores the power of market forces, particularly globalization.

This is not to suggest that the *UDHR* and the *CRC* are working at a cross purposes. The main purpose here is to point out the field difficulty while applying the *CRC* in the case of tribal children’s rights. The linking point between the two is the concept of human dignity. The idea of human rights arose from the idea of human equality which can be construed as human nature before the formation of the state power. While the concept of human rights in the West has been translated into legal terms, the Asian concept of human rights has remained at an ethical and customary level, as some goals to be achieved, such as human dignity and welfare.

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<sup>4</sup> P. Alston, *The United Nations and Human Rights : a critical appraisal* (Oxford : Clarendon Press, 1991).

In this sense Asian culture may be characterized as a – “legal culture in contrast to the legal Western culture.”

Nevertheless, in the twentieth century, people everywhere had a long history of a human rights struggle against abusive political power and social evil, including war and false beliefs. The contemporary world, especially subsequent to *UDHR*, has pursued the internalization of human rights through international conventions and agreements. While the concept of human rights has become internalized, it still needs to be more strongly grounded in the domestic soil through a process of synthesis with indigenous cultures. The degree of commonality and difference between the concept of human rights and the concept of human dignity is rather subtle. But if we assume that human rights is a more legalized concept than human dignity, then the Indian history and culture may be considered relatively “underdeveloped” as compared to Western countries.

Two historical texts, the *French Declaration of 1789* and the *American Bill of Rights*, form the backdrop of the dominant human rights discourse. It is the vision and the aspiration of these two parallel and broadly similar currents of American and French liberative thought that saw the emergence of the post World War II watershed document of modern human rights movements; the *UDHR*. Therefore, we see that the current notions of human rights have evolved from the human rights conception of one political culture, that of western parliamentary democracies.

We will try to locate the cultural value in the Indian societal context and to explore their potential to support a broad spectrum of human rights. In a predominantly traditional society like India, the operative principle of both social cohesion and individual interaction has been the notion of Dharma – the totality of social, ethical and spiritual harmony. It needs to be emphasized, in a sense that is very important to our purpose here, that Dharma is total cosmic responsibility, a universal justice far more inclusive, wider and more profound than any facile Western equivalent such as duty.

The tectonic plates that support the Indian cultural ethos were fashioned in circumstances of remote antiquity, in a pre-modern and mytho-poetic context, a context that was informed by an intuitive grasp of the interrelatedness of a multi-layered reality. It is only such a mytho-poetic unified field awareness that can engender in its cultural practice a farmer’s prayer that offers an apology before the ploughing of the land. Thus, the civilizational moorings of the Indian sensibility beg an alternative orientation to the human rights question. So, the perceptions that traditional India has no notion of human rights are valid only in a restricted sense.

The Indian notion of Dharma that actuates the paradigm of duties is not exactly unproblematic. Even as it upholds laudable moral strategies for existence, it slips into an uncomfortably easy partnership with the process of hegemony that India has been home to for so many years. The paradigm of duty, when it is used for acceptance of injustice, creates problems and thus “historic wrongs” towards Dalits,

and tribals have played a major role in the violation of their human rights. This paradigm has been used as an enforcing mechanism in oppression, based on caste, occupation, race and gender in pre-modern India.

The nature of the modern Indian state has Western and Indian models of governance. Mahatma Gandhi was able to fashion a synthesis between the contraries of tradition and modernity that is of enormous significance to any attempt at clarity over the question of human rights. The polemics of human rights have so far occurred within the framework of the nation-state, in terms of the space available to various minorities vis-à-vis the dominant group within the nation-state, and perhaps in terms of the relationships between nation-states. This has resulted in the formulations of what have been termed first and second generation rights. The first generation rights are those that derive from the liberal democratic models of governance, practices in Western Europe and America, while the second generation rights derive from contestations of Third World quarters, where human rights have economic and cultural determinants that cannot be ignored. So far, human rights debates have centered around the notion of the nation-state and the problematic of rights within that framework.

While the human rights enterprise has been active in this domain, a second front is now slowly opening up. Over the last twenty-five years, a series of processes that threaten the idea of the nation-state with quick irrelevance have begun operation. Transnational business conglomerates have come into existence with the express idea of the optimum exploitation of the earth's resources. These conglomerates have begun occupying economic and cultural spheres worldwide, in a very marked fashion. This then is the crisis which the human rights enterprise needs to grapple with in the next millennium, and this will bring more problems to the tribal population worldwide. This is largely going to effect future tribal children.

It is important to note here that the Indian society that, in the last 150 years, has been in an engagement with European modernity, has realized the "historic wrongs" done to certain communities. The right to development which is the corner stone of present day human rights thinking has to be seen in light of certain cultural constraints. Gandhi's greatness lies in accepting these limitations and learning from others.

The view that the recognition of human rights in international law is Eurocentric fails to focus adequately on the historical developments in the area of individual rights and family. The interactions between the civilizations of Greece, Rome, Islamic world and China are part of recorded history. These exchanges brought the influences of the East from the period of ancient antiquity to Europe. Colonialism shifted the process of historical growth or even disintegration in Asia and Africa. There is enough evidence available in Buddhist tradition which suggests that the idea of human rights existed as early as 2500 BC.

**Emperor Ashok 268 BC:**

Upon the forest in his domain His Majesty had compassion, for the desires for all animate being security, control over the passion, peace of mind and joyousness.

There are numerous events in recorded history as well as in oral and folk tradition which speak of popular resistance and challenge to the power of rulers who violated the norms of what was deemed to be a just order or who acted in a way so as to jeopardize public welfare.

The impression that Asian and African societies do not recognize the status of individual as opposed to community rights fails to record the fact that the philosophical traditions of the two great religions that have an impact on these regions – Buddhism and Islam– emphasize the importance of the individual. It is at a later stage that the “historical wrongs” became part of behaviour, most probably from the third century AD.

## **II. Rights of Children**

Within the past few years, the world has witnessed momentous changes. Perhaps there is no comparable period during which the course of human dignity has been so dramatically changed. The South Asian region is one characterized by extraordinary geographical, political and socio-economic diversity. Paul Sieghart, the renowned human rights scholar and activist, has stated that one of the most cynical propositions in politics is that “you cannot make omelets without breaking eggs.” In the field of economic development, it has meant that you cannot create the benefits of growth without violating, at least temporarily, the human rights of a substantial number of citizens. This thesis had led to many in South East Asia arguing that human rights and democracy must be subordinate to the imperatives of development. This view is changing fast today.

One of the weaknesses of human rights movements in South Asia has been the conspicuous failure of the human rights movements to expand the support base for secular, democratic and pluralistic values. Therefore, the discourse on human rights and development needs to be enriched by explicit reference to the religious and cultural traditions of South Asia. It is in this context that we need to revive obligations of reciprocity within family attitudes and values, supportive of the rights of the child and the needs of the elderly. Such an approach leads to more effective protection of social rights than what could be available in a legal culture that views these issues exclusively in terms of an individual’s claims against the state.

With this in mind, let us look at the rights of tribal children. For the purpose of understanding the rights of the children, we can broadly divided them into four categories:



1. The right to survival, which includes the right to life, the highest attainable standard of health, nutrition and adequate standards of living. It also includes the right to a name and a nationality.
2. The right to protection, which includes freedom from all forms of exploitation, abuse, inhuman or degrading treatment, and neglect, including the right to special protection in situations of emergency and armed conflicts.
3. The right to development, which includes right to education, support for early childhood development and care, social security and the right to leisure, recreation and cultural activities.
4. The right to participation, which includes respect for the views of the child, freedom of expression, access to appropriate information and freedom of thought, conscience and religion.

### **Who is a Child ?**

According to the *CRC* "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 1)

### **Definition of a Child : Illustration from the Law in India <sup>5</sup>**

**Criminal Law:** Nothing is an offence which is done by a child under seven years of age.

**Penal Law:** Nothing is an offence which is done by above seven years of age under twelve, who has not attained sufficient maturity of understanding to judge the nature and consequence of his conduct on that occasion.

**Juvenile Law:** "Juvenile" is a boy who has not attained the age of sixteen years and a girl who has not attained the age of eighteen years

**Family Law:** Child means a person who, if a male has not completed twenty one years of age, and if a female has not completed eighteen years of age.

**Labour Laws:** A person shall not be qualified to be engaged as an apprentice unless he is not less than fourteen years of age.

**Factory Laws:** No child who has not completed his fourteen year shall be required or allowed to work in any factory.

**Child Labour Law:** Child means a person who has not completed his fourteen years of age.

<sup>5</sup> UNICEF India Background Paper, March 1994.

<sup>6</sup> UNICEF India Background Paper, March 1994.

### **Laws in India**

The traditional political set-up of the tribes was affected by the advent of British Diwan of Bengal, Bihar and Orissa in 1765. In 1769, the British penetrated into the Chotanagpur region and the Raja of Nagpur and Ramgarh accepted British authority. In 1869, the famous Chotanagpur Tenancy Act was passed. The North Eastern Himalayan region tells a century old story of isolation and "leave them alone."<sup>7</sup> The British first came into regular contact with the Nagas in about 1832. Taking India as a whole, we find that by the introduction of British rule, tribal solidarity was disrupted. The collection of revenue, the establishment of a policy of a central judicial system and a policy of an extreme type of isolation in some regions contributed to the deterioration of the authority of tribal leaders, and people settled seeking escape from the tribal authority. In modern India, Jawahar Lal Nehru sought the tribe to "dwell along the lines of their own genius" and further assumed that in no case should there be any imposition. Contrary to this, some, like Thakkar Baba, advocated full assimilation. A study team on tribal development programmes in 1969 advocated total assimilation to be reached by the fourth "Five-Year Plan." Thus, the policy of segregation and the policy of assimilation have together functioned in India.

The *Constitution of India* [hereinafter *COI*] has given the tribes a number of safeguards, considering them to be the weaker section of the population. In the first instance, a period of 10 years was given to achieve the goal, but as the problem was too complicated to be solved in a single decade, it has persisted through the decades.

#### **The Constitution of India:**

Article 14, the fundamental right to equality before the law.

Article 15, fundamental right not to be discriminated against on grounds of religion, race, sex, caste or place of birth.

Article 21, the fundamental right to life.

Article 23, fundamental right not to be exploited and bonded as a labourer.

Article 29, fundamental cultural right and protection of interests of minorities.

Article 51 obliges India's Government to honour international law and agreements while Article 253 confers legislative powers on the Parliament so that it may translate the international commitment to the laws of the land. In addition to this the *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989* clearly laid down the protection of tribal.

<sup>7</sup> E. Verrier, *A New Deal For Tribal India* (New Delhi, 1961).

**The Tribals in India:**

Many people find it hard to believe that India has a large indigenous population. The tribal population of India, as per the 1991 census, is about 68 million, constituting 8.08 per cent of the total population. Among the states, Mizoram occupies the first position having 94.75 per cent of scheduled tribes of the total population in 1991, followed by Lakshwadeep (93.15 per cent), Nagaland (87.70 per cent) and Meghalaya (85.53 per cent). The lowest percent of scheduled tribe population has been observed in Goa (0.03), preceded by Uttar Pradesh (0.21) and Tamil Nadu (1.03). Of the total tribe population of India, 23.73 per cent are in Madhya Pradesh, 10.80 per cent in Maharashtra, 10.38 per cent in Orissa, 9.77 per cent in Bihar and 9.09 per cent in Gujarat. Among the states, Madhya Pradesh, with 15.40 million, has the largest population of scheduled tribes, followed by 7.32 million in Maharashtra and 7.03 million in Orissa. The tribal children are estimated to be 7.2 percent of the total child population – roughly 22.8 million. There are 33 districts in India that have a high percentage of tribal children (about 60%) and 13 districts (with 45-60%). These districts are in the states of Meghalaya, Mizoram, Nagaland, Eastern Madhya Pradesh, Western Orissa and Southern Gujarat. Scheduled tribes have been enumerated in 25 out of 30 states and Union territories. Among 25 states the proportion of scheduled tribe population of the total population of the state declined in 12, increased in 12 and remained static in 1.

**Sex Ratio :** Another aspect of the population, with particular reference to women, which can be studied with the available census data is sex ratio. The sex ratio of the total population in the 1981 Census for the country, excluding Assam, Jammu and Kashmir, was 935, which declined by eight points to 927 in 1991. It is significant that all three segments of populations, scheduled caste, scheduled tribes and other, registered a decline in sex ratio, though differently; the highest drop of 11 points being for the scheduled tribes, from 983 to 972.

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**Sex ratio female per 1,000 males for total scheduled tribe <sup>8</sup>**


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State	1981		1991	
	Total	ST	Total	ST
<b>INDIA</b>	935	983	927	972
Andhra Pradesh	975	962	972	960
Arunachal	862	1005	859	998
Bihar	946	993	911	971
Goa	975	845	976	889
Gujarat	942	976	934	967
Haryana	870	—	865	—
Himachal Pradesh	973	978	976	981
Karnataka	963	971	960	961
Kerala	1,032	992	1036	996
Madhya Pradesh	941	997	931	985
Maharashtra	937	974	934	968
Manipur	971	975	958	959
Meghalaya	954	1002	955	997
Mizoram	919	997	921	982
Nagaland	863	955	886	946
Orissa	981	1012	971	1002
Punjab	879	—	982	—
Rajasthan	919	945	910	930
Sikkim	835	927	878	914
Tamil Nadu	977	968	974	960
Tripura	946	962	945	965
Uttar Pradesh	885	915	879	914
West Bengal	911	969	917	964
<b>Union Territories</b>				
Andaman & Nicobar	760	930	818	947
Chandigarh	769	—	790	—
Dadra & Nagar	974	1018	952	1022
Daman & Diu	1,062	952	969	931
Delhi	808	—	827	—
Lakshwadeep	975	1002	943	994
Pondicherry	985	—	979	—

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<sup>8</sup> National Commission for Women, July 1996.

**Estimates of Tribal Children in India**

The available figures suggest that the tribal children are 7.2 per cent of the total child population. The total child population, below 15 years in India, is 304 million. Tribal children may be about 22 million. The Table below gives state wide details of tribal children in India.

**Tribal Children in India<sup>9</sup>**

State/Union Territories	% of ST children to total population
<b>INDIA</b>	7.27
Andhra Pradesh	4.06
Assam	11.02
Bihar	8.82
Gujarat	14.86
Haryana	N.S.T.
Himachal Pradesh	3.93
Jammu & Kashmir	N.S.T.
Karnataka	0.80
Kerala	1.30
Madhya Pradesh	19.98
Maharashtra	6.27
Manipur	32.45
Meghalaya	83.73
Nagaland	93.14
Orissa	23.64
Punjab	N.S.T.
Rajasthan	12.71
Sikkim	-
Tamil Nadu	0.80
Tripura	29.34
Uttar Pradesh	N.S.T.
West Bengal	5.99
<b>Union Territories</b>	
A & N Islands	18.07
Arunachal Pradesh	83.90
Chandigarh	N.S.T.
D & N Haveli	87.98
Delhi	N.S.T.
Goa, Daman & Diu	1.60
L M A Islands	-
Mizoram	95.28
Pondicherry	N.S.T.

<sup>9</sup> *Atlas of Children in India, 1994.*

### **Child Poverty is Increasing Among the Tribals**

“Starvation Stares Surguja Tribal in the Face” was one of the recent articles published in leading newspapers in India.<sup>10</sup> Despite news that six deaths took place, the local administrator first denied that there were any such deaths. In medical terms, the deaths were caused by the failure or non functioning of vital organs of the human body. Starvation death among the tribal population has been prevailed at all times in every part of the country, but officials try to deny deaths due to starvation and to hunger-related diseases. In 1991, starvation death of tribal children was reported in Orissa, Tripura and Andhra Pradesh.

### **Kalahandi Death Due to Starvation**

Cuttack, July 13, 1991 (UNI) : Sukha Jani, of Deypur in Orissa’s poverty stricken Kalahandi district, died of starvation. Bandiki Sahar and Prabati Sahar of Sindhan village in the same district also died of starvation, the survivors being their eight-year old daughter and five-year old son.

These are some of the findings of the one-man commission constituted by the Orissa High Court to inquire into the condition of the people in the drought stricken Kalahandi district.

According to press reports (November 29, 1991 *Hindustan Times*, New Delhi) “The horror of starvation in Tripura,” over 500 deaths took place due to starvation or hunger related diseases. “Due to starvation, several unheard of things have been practiced to keep survive themselves. The mothers are selling their new born babies, for as little money as Rs. 50 in Sonamusa and Gandachirum” (Gedam, 1995).

Deaths are part of a seasonal phenomenon, said the Chief Minister of Tripura. In 1988, some 33.4 % of the population of India was below the poverty line. But the percentage is higher in tribal dominated areas, MP (41.5) Maharashtra (36.7) and Orissa (48.3).

The most shocking incident is the death of 4,000 Korku tribal children in Melghat (Maharashtra) between 1993 and 1996. In this case the ICDS, Integrated Child Development Scheme of the government, considered 20% weight deficiency “normal.” The records reveal the cruel neglect and suffering of tribal children due to carelessness by ICDS and PHC personnel. The high infant mortality rate among the tribal community has not been properly recorded. This is an area where more information needs to be collected by NGOs, researchers, international agencies and the governments.

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<sup>10</sup> H. S. Bantwal, *Hindustan Times* (5 April 1992).

The male-female ratio is another indicator to judge the health status of a girl child. The male-female ratio in 54 villages in Melghat is 90 females for 100 males, although the average ratio for the Melghat area is 96 females for 100 males. The national average is 92.7 females for 100 males and the Maharashtra average is 93.4 females for 100 males. Another indicator of tribal women's health is an analysis of 535 children's death in 121 hamlets/villages which reveals that 6.8% babies were stillborn or died on the day of birth and 14.8 % did not live for even one month, most probably due to premature delivery and low birth weight.

In a number of cases, tribal people particularly living in and around a sanctuary or reserved forest are denied access to traditional nutritional and medicinal plants. For example, in Melghat the 1993-1994 to 2002-2003 Forest Working Plan requires all climbers and so-called "inferior species" shall be cut out. This instruction is given in the Working Plan despite previous information regarding medicinal plants in the area. These climbers are used by the local population for nutritional purposes and for several varieties of diseases: cough, diarrhea, dysentery, burn injuries, worm trouble etc. In fact, tribal medicine men are finding it increasingly difficult to locate the medicinal plants they need. It seems that some species of great common usage and medicinal value may have already disappeared from the forest of central India. According to information released by Mr. Bittu Seghal, Editor of Sanctuary Magazine and member of the Project Tiger Steering Committee, the Forest Department is using chemical pesticides harmful to the flora and fauna. The government assumes that there can be no viable cohabitation in Melghat between the tribal and the wild animals and the flora. Some officials recognize the value of tribal knowledge.

### **Health and Nutritional Status**

Very few studies have been carried out on tribal female health in India. Most studies done so far have been in Madhya Pradesh, Eastern Maharashtra and part of Andhra Pradesh and Orissa. A study of Bastar tribe shows that among the Bhatra tribe the infant mortality rate is very high, 149, and Muria 123. Another study in Surguja revealed the average fertility rate among the Kharwar to be 4.85. The age group 40-45 showed high unproductive wastage of 9.67 per cent. Among the Juan, the marital age specific fertility rate was the highest, 0.336 percent, among the 20-24 years mother age group, and the lowest, 0.044 percent, among the 45-49 years age group. In West Bengal in 1990, the Kora tribe group was reported to have a mean surviving children rate of 3.30 per cent in the completed age of fertility. The crude birth rate was 4.181 per cent and the total fertility rate 4.42 per 1,000 Kora women respectively. These values are relatively higher than the national figures and appear to be in consonance with those relating to other tribal groups in the Northern zone comprised of the Himalayan belt of Himachal Pradesh, Uttar Pradesh and Darjeeling district of West Bengal. High infant mortality rate and high fertility have been observed among the Tharu and Bokasu couples. Among the Jaunsaris a crude



birth rate of 43 and infant mortality rate of 80 per thousand live births were observed in 1993.

One comes across few studies on fertility and mortality in the Western zone. In the Southern zone, comprised of Andhra Pradesh, Kerala, Karnataka and Tamil Nadu, a 1984 study of the Chenchu tribe of Achampet Taluka of Andhra Pradesh stated that the average number of children for each woman was 3.67. The average number of surviving offspring per married woman was 2.96, and mortality in relation to live births was 27.5. A high degree of fertility and mortality among the Pradhan of Adilabad district was observed.

A study of the Bastar district of Madhya Pradesh shows that the average life expectancy at birth for Muria males is 37.56 and for females is 40.07, for Bharta males 43.68, and for females 41.10. These figures are much lower than the national average of 58.6 years. Among the Kora group of Midnapore district of West Bengal, life expectancy at birth was reduced in 1990 to 33.87 years for males and 29.70 years for females. This indicates that, visibly, emancipated tribal women are under pressure to be more fertile due to high infant mortality rates.

### **Literacy Among Tribal Children**

Literacy is one of the basic indicators of development of any community and also of the future prospect for acquiring new skills to meet emerging challenges, particularly of the new millennium. The literacy rate in India has increased from 18.33 per cent in 1951 to 41.42 in 1981, and has increased from this to 52.11 per cent in 1991. The literacy rate for scheduled tribe has also increased from 8.5 in 1961 to 16.4 in 1981. The literacy rate for all in 1991 is 52.11, for males 63.86 and for females 39.42. Among the scheduled tribe population, as per 1981, the total literacy rate was 16.35; for males 24.52 and for females 8.08. In the rural areas the tribal female literacy rate was noted at only 6.81. The same was 0.93 in Rajasthan, 2.78 in Andhra Pradesh and 3.91 in Madhya Pradesh. It shows that among the deprived sections, the girl child is further deprived.

The school drop-out rate for tribal children is very high, about 64 per cent. Some observe that tribal children are deprived of nutritive brain building proteins in early infancy and enter school with a deficiency that proves to be a continuing handicap, and for the girls it is 70 percent. The education among tribal people has shown progress in the Northeastern states of Nagaland, Mizoram and the Ranchi areas of Bihar due to missionaries efforts. In Madhya Pradesh, Raja Gandhi Shiksha Mission has done constructive and innovative work in the field of education of the tribal children.

### **The Tribal Girl Child in India**

“Phuleshwari has become rich over night.”

“How?”

“Only few hairs were cut while teasing her and the government has paid her fifteen thousand rupees. Every other leader who is visiting gives her some money.”

Two non-tribal youth were discussing the event, and their comments indicated that sexual harassment of the tribal girl was not a matter of serious concern for them. This attitude of sexual abuse of tribal girls is not an isolated incident in India.

In a literate state like Kerala sometime back, the State Commission for Women had to order DNA tests to help around 100 tribal unwed teenage mothers in the Northern district of Wynad. The innocent tribal girls were sexually abused, and when pregnant were deserted by the non-tribal who in the first place promised to marry them. The DNA tests would help only those who are present here but many have left the place.

This sexual exploitation of tribal girls seems to have some pattern in all mineral rich mining areas of India. Most coal, iron ore and aluminum mines are in indigenous population areas. Major irrigation dams are also coming up to tribal areas, displacing them from their ancestral land. The Armada Dam is an example of how over 200 villages, many belonging to tribal people, would submerge, thanks to the social activities of Megha.

Patkar of Narmada Bachao Andolan noted that the World Bank has withheld funding to this mega dam. This dam would displace 1.2 million people and about 40% of the children – 45,000. The tribal children are paying the price for development. A few years back a district official from central India forced some non-tribal youth to marry tribal girls, as they had sexually abused them and deserted them while employing them as domestic servants. After some time the official was transferred.

There are allegations by leading human rights groups in India that there have been mass rapes of tribal girls in Northeastern India, Nagaland, Manipur, Mizoram and Meghalaya over the past several years by paramilitary forces. Recent cases of some tribal boys sodomised by army personnel in Manipur are currently being taken up by Amnesty International.

Contrary to the Hindu treatment of the girl child, the tribal culture welcomes the birth of a girl. The traditional bride prize was in fact a recognition of her significant place in her parents' as well as a husband's family. The tribal girl child is treated as equal to the male child. This is obvious right from the time of a child's birth in a family. The mother earth and girl child command equal respect in tribal culture. The girls between the ages of 6-14 years form an important age group as the

girls are in a period of major biological, psychological and social changes, because when she enters her fifteenth year of age she is entering into the reproductive age group. But, due to less food security, the tribal girls face severe malnutrition. In most of the Indian tribes there is no child marriage and girls are married after puberty.

The tribal girls enjoy full freedom and equal opportunity at all social and cultural institutions. The two important places of social intercourse are the out dormitories and the fair or weekly bazaars. In fact, these places are dominated by the presence of young generations of boy and girls. The boys and girls assemble and play and they share their experiences, knowledge and joys and sorrows. Thus, these are cultural and educational institutions where the girl selects the boy of her choice, mostly culminating into marriage. This is a unique right of a tribal girl which is not available to girls from other communities in India.

Some specific fairs and melas, for example the Bhongdu-Hati among the Korku tribals, are popular. The girl can also enter (Ghusna) the house of a boy of her own choice, stay with him, and later the boy informs the panchayat and the marriage can be performed at leisure. Divorce is easy and the girl can initiate the process and exercise her will. A similar practice is found among the Bhil tribes. But this freedom and equality of tribal girls is "misunderstood" by the Hindu community who terms these girls of "loose character."

It is really a matter of concern that the girls who enjoy such a social status, in practice, are not receiving education. The literacy rate among tribal girls is very poor.

#### **Female and Tribal female literacy rate in India <sup>11</sup>**

	Female		Tribal girls	
	1981	1991	1981	1991
<b>INDIA</b>	29.75	39.42	8.04	NA
Andhra Pradesh	14.01	33.71	3.46	NA
Madhya Pradesh	18.99	28.39	3.60	NA
Bihar	16.51	23.10	7.75	NA
Gujarat	38.56	48.50	11.64	NA
Orissa	25.01	34.40	4.76	NA
Rajasthan	13.99	20.84	1.20	NA

From the above comparison it is clear that the tribal girls progress' in education is far behind than the all India average. Feedback from the field indicates that difficulty in language, timing of the school, curriculum content and, in 60

<sup>11</sup> *Child In India*, 1994, NIPCIED.

percent of cases, no proper clothing while attending school, are the major reasons for the low literacy rate among tribal girls.

The school drop-out rate is higher among the tribal girls than other communities despite the government claiming that several action plans have been initiated. The all India drop-out rate at the elementary stage is reported to be more than 74 per cent for girls and 62 per cent for boys. At the lower primary stage 62 per cent of girls drop out while the percentage of drop-out for boys at this stage is 56. At the higher primary stage, waste is reported to be 24 per cent for boys and 30 per cent for girls. By looking at the illiteracy rates one can have a clear idea about the magnitude of the problems that still face the efforts for educational development of the women and girls in India. According to the 1991 Census, 60.58 per cent of women are illiterate and 91.96 per cent of tribal girls are illiterate. According to the 1991 census, the number of illiterates in all age groups is 33.6 crores.

It is our experience that:

Tribal children learn through observation and imitation rather than through reading, writing and verbal explanation.

They need to be actively involved in the learning process. Personal trial and error is more important than verbal instructions and demonstrations by the teacher.

Tribal children are used to learning in a real life setting rather than the contrived one of the classroom.

Tribal children are personally oriented rather than information oriented. The relationship with the teacher is therefore often more prized than the information itself.

In most of the teaching in formal school in India these elements are missing.

In the cases of the urban and country schools in more settled areas, tribal children have to face considerable pressure from teachers and peers from whom they experience prejudice in varying degrees. They are aware of belonging to a separate racial group, held in low esteem. Many teachers have either active prejudice against them or a passive one, which regards them as a problem group. This attitude readily translates itself into fulfillment of the prophecy of no achievement on the part of the students.

Here is how two tribal girls now working in Delhi narrate their school days experience. "Most of the teachers are prejudiced and they don't treat us like other girls. They treat us like bits of dirt there, most of them look at us as if we have no right to be there. If any thing is missing from the class they will call tribal children and would ask straight whether we have not taken the missing item."

The research literature suggests that tribal children in particular achieve best when they are taught by warm, but also demanding teachers. Another problem

is curriculum; the present day history is usually one-sided, and no information is given on their culture and history.

It is often blamed that the tribal parents are not interested in their children's education. Our field experience has been that many tribal parents have the feeling that education "will lead to a better life than they had." And there are a certain number of teachers who strive to learn about their background and develop a sensitivity and appreciation for their culture.

A very real disincentive to educational achievement for tribal children is the knowledge that even if they complete six years of schooling, prejudice may still prevent their obtaining suitable employment. These factors, together with the poverty, illiteracy and low educational level of the parents' generation, make the problems complicated. All of these factors join to ensure a low self concept and lack of that feeling of confidence and competence which only achievement can produce.

A national plan of action for the Girl Child (1991-2000) is supposed to be an integrated, multi sectoral decade Plan of Action for ensuring the survival, protection and development of children, with a special gender sensitivity built for girl children and adolescent girls, but in the case of tribal girls they do not seem to have made much impact. Many tribal girls are employed as child domestic workers and suffer from abuse and exploitation.

### **III. Micro Level Experiences**

All is not dark in an "area of darkness;" some progress has been made. The various development plans and programmes over four development decades, 1951-1991, have brought about perceptible improvement in some areas. In the Approach Paper to Ninth Five Year Plan, two major steps towards gender justice have been taken for the first time. The first is the listing of empowerment of women as a major plan objective, and the other is to propose the inclusion of a woman's component in the Plan for all Central ministries and departments and of the State governments. Women Development Corporations (WDCs), Rashtriya Mahila Kosh (RMK), Mahila Samridhi Yojna (MSYs) and Indira Mahila Yojna (IMY) have been floated to help women, with a special focus on scheduled caste and scheduled tribe women. Three successful micro-level experiments are discussed below.

#### **Rajiv Gandhi Foundation**

One of the most outstanding and integrated works for the uplifting of the tribals has been carried out by the Rajiv Gandhi Foundation in Madhya Pradesh. On 20 August 1994, the Government of Madhya Pradesh decided to convert the selected programme into a Mission mode and marked the beginning of Rajiv Gandhi Mission in the State. These Missions centered around three areas; livelihood security in rural

areas, education and health care. Though the programme is directed to the poor, the major beneficiaries are Scheduled Castes and Tribes.

Focusing on these three areas the following were set up:

<b>Mission</b>	<b>Task</b>
Rajiv Gandhi Shiksha Mission	Universalize primary education.
Campaigns of the National Literacy Mission.	Promote adult literacy through the Total Literacy.
Rajiv Gandhi Mission for control of Diarrhoeal Diseases	Prevent avoidable infant mortality caused by diarrhoeal diseases.
Rajiv Gandhi Mission on Elimination Of Iodine Deficiency Disorders	Eliminate iodine deficiency through universal use of iodized salt and health education.
Rajiv Gandhi Mission on Watershed Management	Improve productivity of degraded land through land and water management.
Rajiv Gandhi Fisheries Development Programme	Create additional employment and productivity.
Rajiv Gandhi Gramdhyog Mission	Increase rural non-farm employment.
Rajiv Gandhi Mission on Advanced Technology	Mobilize advanced technology for development.
Rajiv Gandhi Sanitation Mission	Make sanitation a people's movement in the State.

The results of some of their various programmes are:

**Rajiv Gandhi Mission for Education**

- By negotiating external aid for various educationally backward districts, the Rajiv Gandhi Shiksha Mission has mobilized about 1,000 crores of additional resources to strengthen the state's effort to universalize primary education and expanded educational outreach by providing schools in 10,065 unserved habitations.
- Strengthened the educational infrastructure through the construction of 2,681 school buildings.
- Focuses on the quality of education by developing 198 Block Resource Centers and establishing 5,701 Cluster Resource Centers. Competency based curriculum and teaching learning materials are developed. An average of 50,000 teachers are trained every year. Initiated processes of participatory management of education by setting up 27,868 Village Education Committees that bring together the gram Panchayat, parents and teachers.
- As a result of an intensive mobilization process the Mission has generated a wide scale demand for education. Total Literacy Campaign projects on the National Literacy Mission are now operative in various districts and 35,40 lakh people were made literate of which 20 lakh are women. Forty lakh are presently undergoing literacy classes.

**Rajiv Gandhi Mission for Control of Diarrhoeal Diseases**

Diarrhoeal deaths were reduced by 48% by January 1997. The case fatality rate, i.e. the number of deaths per 100 cases of diarrhoea, come down from 2.0% in 1994 to 0.8% in 1996. For the first time a data base was created on villages prone to water-borne diseases and concerted action was launched in identified 11,086 villages.

**Rajiv Gandhi Mission on Elimination of Iodine Deficiency Disorders**

The Mission universalizes the use of iodized salt and achieves its target 11 months ahead of schedule. Independent evaluation by the International Council for Control of Iodine Deficiency Disorders confirms the universal use and confers an award on Chief Minister Digvijay Singh and the Rajiv Gandhi Missions.



### **Rajiv Gandhi Gramodyog Mission**

Seven hundred and forty-nine (749) crores in assistance was obtained from OECF for a comprehensive sericulture modernization plan to benefit 50,000 families. Eleven new craft centers were developed for handicrafts. 1.44 lakh people have been employed in the handloom sector.

Most of the programmes of the mission have successfully tackled the relevant problems. Yet, the most commendable aspect of the mission is its integrated approach adopted by the RGF, which is an example of how things ought to be done for tribal areas.

### **Grameen Bank**

The Grameen Bank project in Bangladesh is also a noteworthy case. The fundamental aim of the project was to build self-reliance, and this was planned to be achieved through empowering women. It envisaged a plan to provide credit to women to set up small-scale enterprises. Women could thus start an enterprise, which helped to support their families, on credit given at low interest rates. The plan met with great success and has assisted many women and their families.

Its relevance for tribal communities is that in these women have always played an economically active role, and the programme recognizes this. Yet, in traditional banking policy, women have never been considered credit worthy. The Grameen Bank set off a process that brought women into the market economy and helped them cope with it.

### **The Corporate Sector**

There is an example of successful intervention by the corporate sector in tribal development in India. In Jamshedpur in the state of Bihar the Tatas set up their iron and steel industry over a century back. It involved displacing tribals from their lands to build factories and houses. However, the tribals were taken care of in other ways. They began high-quality health care services, educational and employment programmes for the tribals.

There was a particular improvement in general health among tribal children and a substantial decline in infant and child mortality rates. Children benefited from the educational programmes and got employment in their factories and outside.

#### IV. The Indian Laws and International Instruments

COI Article 51 obliges India's Government to honour international law and agreements, while Article 253 confers legislative powers on the Parliament so that it may translate the international commitment into the law of the land.

The following international instruments have been ratified by India:

- *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* [hereinafter the *Supplementary Slavery Convention*]
- *The International Covenant on Economic, Social and Cultural Rights* [hereinafter the *ICESCR*]
- *The International Covenant on Civil and Political Rights*<sup>12</sup>
- *The International Convention on the Elimination of All Forms of Racial Discrimination* [hereinafter the *Convention Against Racial Discrimination*]
- *The Convention on the Elimination of All Forms of Discrimination Against Women*<sup>13</sup>
- *The CRC*
- *The Convention on Biological Diversity*

International Declarations signed by India:

- *United Nations Declaration of the Principles of International Cultural Cooperation*
- *Universal Declaration on the Eradication of Hunger and Malnutrition.*

International documents signed by the Prime Minister of India:

- *World Declaration on the Survival, Protection and Development of Children and the Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children*, the documents consequent of the 1990 World Summit for Children.
- *Agenda 21*, the outcome of the 1992 United Nations Conference on Environment and Development (UNICED).

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<sup>12</sup> 19 December 1966, 999 U.N.T.S. 171 [hereinafter the *ICCPR*].

<sup>13</sup> GA Res. 34/180, UN GAOR, 34<sup>th</sup> Sess., Supp. No. 46, UN Doc. A/20378 (1979) [hereinafter *CEDAW*].

**A. The Right to Life : Article 21 of the *COI*, Article 6 *ICCPR* and Article 6 *CRC***

1. RIGHT TO LIFE IS INTERWOVEN WITH THE RIGHT TO CULTURE

A life's wholeness and span are diminished if cultural rights are excluded from it. In the case of forest dwelling, food gathering indigenous people who have shown a preference for a distinct identity, unless the right to culture under Article 29 of the *COI* is guaranteed, their right to life is so devalued that there is virtually no population growth. In fact, a whole tribe's existence is threatened.

2. RIGHT TO ADEQUATE NUTRITION AND PROTECTION FROM EPIDEMICS

The 1974 *UDEHM* declares in its Article 1 the "inalienable right to be free from hunger and malnutrition."

This fundamental right was reaffirmed by the *Human Rights Committee* linking it directly to the right to life in a General Comment on Article 6 *ICCPR*. It asserted that "the right to life has been too narrowly interpreted." The expression "inherent right to life" cannot be properly understood in a restrictive manner, and the protection of this right requires that States adopt positive measures.

In this connection, the Committee considers that it would be desirable for States Parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.

In 1990, the *World Declaration* committed States to "work for optimal growth and development in childhood, through measures to eradicate hunger, malnutrition and famine [...]." The *Plan of Action* recommendations emphasize that

for the young child and pregnant women, provision of adequate food during pregnancy and lactation; promotion, protection and support of breast feeding and complementary feeding practices, including frequent feeding; growth monitoring with appropriate follow-up action; and nutritional surveillance are the most essential needs.

3. RIGHT TO LIVELIHOOD AND DIGNITY

Article 21 of the *COI* has been interpreted by the Indian Supreme Court to encompass the right to livelihood and to dignity, inherent in the right to life.

**B. The Right to Health, Article 47 of the COI, Article 12 ICESCR, Article 24 CRC**

**1. NUTRITIONAL SECURITY IS AN EXTENSION OF THE RIGHT TO EQUALITY**

Under Article 47 of the *COI*, “The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties [...]”

This fundamental duty is not only a unit in the charter of Government obligations but an extension of Article 14 *COI*. It specifies one of the major areas to be taken care of to sustain the principle of equality. Article 47 takes *COI* Articles 14 and 15 into the sphere of health, forbidding any omission and discriminatory imbalances in people’s nutrition security, right to health and standard of living.

Equality is also a priority of the *ICESCR*. Thus, although Article 2(1) *ICESCR* permits States Parties to implement the rights therein progressively and according to their available resources, Article 2(2) *ICESCR*, places States Parties under an obligation to implement the Covenant’s rights in a non-discriminatory manner.

Article 12(2)(a) *ICESCR* requires that the steps to be taken by the States Parties to achieve the full realization of the right to health shall include “the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child.” While Article 12(2)(d) mandates “the creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

These provisions have been complemented by Article 24(1) *CRC* which asserts the right of the child “to the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.” Moreover, this article urges States Parties to “strive to ensure that no child is deprived of his or her right of access to such health care services.”

For these purposes, article 24(2) requires the taking of “appropriate measures:”

- (a) to diminish infant and child mortality;
- (b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- (c) 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 considerations the dangers and risks of environmental pollution;

- (d) to ensure appropriate prenatal and post-natal health care for mothers;
- (e) to ensure that all segments of society, in particular parents and children are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;
- (f) to develop preventive health care, guidance for parents and family planning education and services.

## 2. ACCESS TO HEALTH CARE

One important right asserted in articles 12 *ICESCR* and 24 *CRC* is that the right to health includes access to health care for all.

The right of access to health care includes the right to access to traditional health care, traditional practices and the modern techniques and medicines, complementing each other to afford the best possible care.

However, if the declared policy of the government is to prevent the traditional medicine-man from practicing his medicine, the government should devise at least an acceptable and reasonable alternative for the communities in question. It is a cruel irony that the reasonable alternative to traditional medicine is having to walk several kilometres in the rain with a sick or dying child in order to receive unprofessional health care.

## 3. INFANT AND CHILD MORTALITY

*CRC* Article 24(2) mandates that steps should be taken for the reduction of infant and child mortality. This article transcends the requirement to reduce infant mortality to acknowledge the vulnerability of children at all ages, especially when the cause of their dissatisfactory health is nutrition deprivation.

Article 24(2) acknowledges the importance of the provision of adequate nutritious foods. The word "adequate" clearly requires a child-specific, age compatible, need-based and season-cognitive approach to nutrition.

"Adequate" also implies the provision of supplementary nutrition in crisis situations.

Although article 24(2)(c) does not link the right to adequate nutritious food to cultural rights, the Indian Supreme Court has ruled in the *Hazaratbal Shrine* case that access to traditional food and nutrition was an element of the right to life.

Article 18(2) *CRC* requires that "States 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

article 18(3) requires that children of working parents shall “have the right to benefit from child-care services and facilities for which they are eligible.”

Article 27 *CRC* complements Article 18 *CRC*. Together, they provide that although the primary responsibility to ensure the right of the child to an adequate standard of living lies with the parents of the child in accordance with their financial capacities, the state “shall take appropriate measures to assist parents [...] to implement this right [...] particularly with regard to nutrition, clothing and housing” (Article 27(3)).

With respect to the responsibilities of the State towards working parents, the Directive Principles of the *COI* recognize the need for maternity relief in Article 42. Under Article 10(2) *ICESCR*, States Parties agree that “special protection should be accorded to mothers during a reasonable period before and after childbirth,” especially with regard to employment.

#### 4. CULTURE AND LIVELIHOOD

Article 27 *ICCPR* and Article 25 *ICESCR* speak of the rights of minorities, and Article 30 *CRC* makes reference to indigenous populations, with respect to culture and livelihood. In particular, Article 30 *CRC* states that indigenous populations should have the right “in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”

#### 5. CULTURE AND EDUCATION

Finally, Article 45 of the *COI* and Article 28 *CRC* recognize the right of the child to education, while Article 29(1) *CRC* states the desired aims of education. Sub-section (c) of the latter provides that the education of the child shall be directed to “the development of respect for the child’s parents, his or her own cultural identity, languages and values...”

However, we found that the syllabus and teaching practices in the local schools alienate tribal children from their own culture and values, in violation of the above.

### **C. The Right to be free from racial discrimination**

Article 15 of the *COI* recognizes the right to be free from discrimination on grounds of religion, race, caste, sex, or place of birth.

According to Article 1 of the *Convention against Racial Discrimination*,

the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

According to this definition, it appears that the discrimination against the Korku people, based on their ethnic origin and nullifying the exercise of their economic, social and cultural rights, is violative of the *Convention against Racial Discrimination*.

**D. The right to be free from economic exploitation and slavery in all its forms**

Article 23 of the *COI*, Articles 6 and 7 *ICESCR*, Articles 8 *ICCPR* and *Supplementary Slavery Convention*.

Article 23 of the *COI* guarantees the fundamental right not to be employed at exploitative wages and enslaving conditions.

1. SLAVERY

According to Article 8(1) *ICCPR*, "No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited."

In addition to the requirement of immediate implementation of the rights entrenched in the *ICCPR*, Article 4(2) *ICCPR* prohibits any derogation to Article 8(1) *ICCPR*. Thus the legal obligation incumbent upon States Parties under this article is of the strongest nature.

The reference in Article 8(1) to all possible forms of slavery relates to the kind of practices described in the *Supplementary Slavery Convention*. According to Article 1(a) of this Convention, the States Parties shall take all the necessary measures to bring about the complete abolition or abandonment of

debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

As per the South Asian Coalition Against Child Servitude (SAACS), and its rights organization Bachpan Bachao Andolan (BBA), many tribal and scheduled

caste children are held in servitude. The SAACS has, as per its claims, rescued 27,000 bonded children, and many of these were said to be from these categories.

## **V. Future Challenges and Policy Implications**

Social policies for children are critical to any nation's future. In the case of tribal children, a general policy for child development becomes a determining factor. The status of tribal children in India suggests that the nation's policies may not be serving them well. While infant and child mortality rates in India have declined since 1961, they remain high among infants in tribal communities. Child poverty rates have worsened during the past three decades; poor health care, inadequate schooling and a near absence of any child care system persists. It is high time that the tribal children are placed on the agenda of development, recognizing that the child's needs must be met and rights fulfilled today, and that early child development is the foundation of human development and cumulative life-long learning.

One notices that the main concerns are missed opportunities to create "political space" for children, and the reactive and somewhat haphazard and uncoordinated manner in which much of child development has developed. It is time to desire to have more proactive input and influence regarding national policies and programmes that will set the stage for, and contribute to, a process that is seen as a precondition for human rights to be respected and implemented. It is in this context that the holistic view contribution of the *UDHR* is unique and can provide us much needed guidance in the next millennium.

### **Creating "Political Space"**

The basic reasoning behind this approach is that, by focusing attention on the attitude, the formation and prospects of the rising generation of tribal children will be protected.

In practice, however, the broad designs, and even the detailed strategies, for the future have been and are to be drawn up with considerable emphasis on the all children's rights for all children. Recent efforts by UNICEF and the UNESCO in the field of education for all children is a grand example.

In line with considerations on the political space issue, among others, the overwhelming message that came over is that the UN should again seek to be, because it is not yet, the credible intergovernmental reference point and adviser on tribal children to which governments will turn of their own accord, and which on this basis, can validly assist and cooperate with other agencies and organizations, international, non-governmental and local associations alike.



### **Creating Basic Conditions for Maximizing The Impact of The Human Rights**

The optimal conditions for the realization of the rights of the child are those in which the maximum proportion of the population is aware of, has accepted and has internationalized those rights. No efforts to promote and protect children's rights can realize its full potential unless the overall context is favourable. This is partly determined by the degree to which the authorities are willing, able, and allowed, to implement legislation, policies and programmes that establish or maintain an "Etat de droit," and that are in consonance with the *CRC*, as well as being conducive to its popular acceptance. It is also dependent upon the extent to which those same authorities allow and enable the awareness of the population to be expressed in practical terms.

### **Making The Best Use of The *UDHR* and *CRC***

There is now general, though not total, acceptance of the fact that the utility of the *CRC* does not lie only in the formal obligations it places on governments. Nonetheless, its potential additional uses have to be kept in perspective and approached in a realistic manner. It would be wrong, moreover, to emphasize these other uses so much that the importance of the legalistic aspect of the treaty is thereby unduly played down. It is the *CRC*'s legal and binding nature alone that provides the basis for such "extra-legal" initiatives, and these initiatives are directed precisely at reinforcing the implementation of the legal obligations the treaty contains.

Bearing this in mind, and if we take for granted its formal requirement of inspiring legal review and reform, judicial decisions, policy determination and the translation of these into practice, the following could be seen as the main ways in which the *CRC* can be put to work. Such an approach will yield positive results for deprived children of indigenous communities around the world.

### **Institutional Use**

The *UDHR* and the *CRC* should serve as a common reference base for all initiatives on behalf of children, whoever carries them out. This implies a common understanding and interpretation of the treaty, which is far from being the case at the present time. Virtually all other human rights instruments essentially remain the domain of "specialists;" this one has been brought into the public arena and is sometimes variously used and abused in ways that are not conducive to realizing the human rights of the child. It cannot serve as a common base unless its legally interpreted ramifications are known. Alas, for safeguarding tribal children's rights, such efforts are negligible. More research is required in this field.

The *CRC* can serve as a framework and guide for institutional policy, programming and evaluation. Its quasi-universal ratification already has one major

and basic implication for policy and programming; there are no longer any “delicate issues” to the extent that the *CRC* covers them. All that may remain “delicate” is the decision on how to broach the issues in any given circumstances. This said, the way in which the attempt is made to put the *CRC* to these uses needs careful reflection.

Ensuring that an appropriate attitude is taken to “vulnerability” is particularly important in a situation such as that of India, where, on the one hand, some would contend that almost the entire child population can be considered as vulnerable, and, on the other, decisions to prioritize activities in favour of any given group can have grave consequences for those effectively marginalized in the process. It is clear from available documentation concerning tribal children, as well as from spontaneous remarks made during consultations for this study, that adolescent tribal girls are one such neglected group.

### **Need for Consistency**

There may in fact be good justification for arguing that consistency is the single most important key; consistency within and among organizations regarding the approach they take to the world range of situations affecting tribal children, and consistency of that approach with all the provisions and implications of human rights.

### **Monitoring by Aid-giving Countries**

Several developed countries, through bilateral agreements and direct funding, support developmental activities in Third World countries. It is in this context that attention needs to be drawn towards the foreign policy of the governments of Canada and Norway. These two countries have included an important element in their aid policies. They examine the impact of their aid on indigenous communities in Third World countries. It is quite surprising that few NGOs in Third World countries are aware of the details of the policies. It becomes imperative that when developed countries support programmes for tribal development in Third World countries, they examine and take a cue from Canada and Norway in this respect.

### **The New Approach**

The symbiotic balance may never be regained, but some measure of equanimity has to be arrived at. In keeping with the current thought, one does not state that tribal society has to remain unchanged, but only that it should join the national mainstream in such a way that their economy, cultural and social systems are not completely destroyed.

### **Need for Child Care**

A large-scale programme of government subsidies or provisions of child care is an essential ingredient in a welfare reform that would reduce the deprivation level among tribal children. The programme could benefit those tribal families who need to go out for work but are unable to do so due to the lack of child care facilities. Providing or subsidizing child care is a way of delivering substantial health to tribals living in the interior areas of forests. Since the benefit would go to the innocent children, there are more chances that infant and child mortality would be reduced among tribal communities.

### **Building Capacities and Skills:**

Experience shows that large-scale subsidies without efforts to generate motivation proved counter-productive in the long run. It is in this context that it is highly desirable that building capacities and skills among tribal youths is accorded high priority, particularly among the adolescent tribal girls. The tribal youth in India is somehow outside this approach and has less opportunities as a youth apprenticeship and related work based approaches. The schools for tribal children lack direct incentives to maximize job market success to students; they spend too little time on information, counseling and placement, provide training, often unrelated to career, and allow too little flexibility to work-based training. It will take sustained effort to reorient public policy so as to build an effective school-to-work system for tribal children.

### **Forest Protection**

The protection of existing forests strikes at the root of the problem. Again, it has been noted that community efforts are the most successful. The Chipko in Uttar Pradesh, and Appiko in Karnataka, are among the best known community resistance movements.

### **Poverty Alleviation Programmes**

The Integrated Rural Development Programmes have been introduced by the government to tackle various poverty alleviation programmes. In tribal areas, there are schemes like the Integrated Tribal Development Programmes which have been formulated on the assumption that creating more productive assets will eventually create more riches, more jobs and a just distribution of wealth.

The schemes are mostly low investment programmes, i.e. bee keeping, handicrafts, bamboo and cane weaving. In reality, the implementation of these

schemes have not benefited the poor tribals. People's involvement is almost non-existent in the choice of schemes or of the beneficiaries. Ecologically sound and less capital intensive projects, like social forestry and bee keeping, are given up in favour of animal husbandry and the production of high-yielding agricultural seeds. Moreover, schemes are introduced without forward or backward linkages, or without a real study of local ecology.

Our study of various tribal communities shows that women contribute more than men. However, in forming forest policies, this role is often ignored by government bodies. Keeping in mind the severe dislocation suffered by women, it is proposed that a forestation policy needs to keep the interest of the tribal community in mind from a human rights perspective.

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The growth of independent civil sectors worldwide will be driven by the increasing loss of sovereignty and competence of nation states. So, a new governance mechanism would have to be evolved in which marginalized groups, such as tribals and their children, have equal rights and opportunities. Today, much more soul searching is needed about how to democratize the decision-making process, for on this depends our common future in the next millennium.