CHAPTER - I

TOPIC OF THE STUDY, ITS RATIONALE AND EXECUTION

I. Introduction

The study proposes to explore social reality of ethics--a case study of human rights prescriptions for children vis-à-vis obstacles in realizing them in a problem area.

Attempt would be made to assess the extent and range of problems experienced by children in a district having lowest literacy percentage\(^1\) in the country, highest work-participation rate of children\(^2\), one of the highest scheduled tribes concentration-index\(^3\), very high crime rate\(^4\), fourth highest child mortality\(^5\) and fifth highest percentage of out of school children\(^5a\).

\(^1\) Three lowest literacy districts in India, as per 1991 Census, are: Jhabua (M. P.) 19.01%, Kishanganj (Bihar) 22.22% and Koraput (Orissa) 22.66%. 1991 Census has a new, realistic, concept of literacy. Literacy has been defined as the capacity of a person to read and write a language with understanding. Therefore, while computing literacy-rate, 0-6 years population has not been taken into account. If total population is taken, literacy percentage would be lower (14.54% for Jhabua).
Jhabua ranks third lowest female-literacy district (11.52%), above Barmer (7.68%) and Jalor (7.75%) districts of Rajasthan (1991 Census figures).
High work-participation rate (the proportion of main workers plus marginal workers to the total population) is a major indicator of human compulsion. It shows the proportion of people participating the process of production. Jhabua has the third highest work participation rate (54%) in India, below Lahul Sphiti (64.9%) of Himachal Pradesh and Tawang district (55.6%) of Arunachal Pradesh. National average is 37.5%.

2. Child (5-14 years) work-participation national average in India was 5.37% in 1991. Jhabua district had 25.52% child population working. [Source: Registrar General of India: Working Children in India, An Analysis of the 1991 Census Data (New Delhi, 1999), Pp.92-313 (Table-5)].

3. Scheduled Tribe (S.T.) Concentration-index is calculated by dividing a district's S.T. percentage population by India's S.T. percentage population. Sixty-four districts in India have this index above 5.00. Jhabua's figure is 10.85.

4. Crime in India, 1994 (New Delhi, Ministry of Home Affairs, April 1996) mentions that in 1994 out of 17, 203 juveniles apprehended under the Indian Penal Code and Special & Local Laws, 2727 were apprehended in Madhya Pradesh (highest among all states and union territories): 119 for murder (India: 371) 71 for attempt to murder (India: 221) and 51 for rape (India: 181) Unpublished data (i.e. supporting district-level statements) show that Jhabua ranked high in Madhya Pradesh list of apprehended juveniles.

Crime-statistics in India are basically summaries of police-cases alleging deviance and are prone to omission and class-bias.

Bhils of Jhabua have been a major subaltern group (since about five centuries) in conflict with the authorities enforcing public order and civil law. The district is known as a 'crime-infested district'.

5. Jhabua's figure is 206 per 1000 live births i.e. estimation of newborn child dying before the age of five. Other three districts are: Baleshwar (Orissa) 246/1000, Badaun (U.P.) 211/1000 and Panna (M.P.) 210/1000.


5a 76.6% children (5-14 years) were not attending school at the time of 1991 Census being recorded. Districts having higher percentage were: Kishanganj (82.07%) & Araria (79.20%) in Bihar and Rampur (78.34%) & Badaun (78.22%) of U.P. [Source: Register General India.op.cit.1999. Pp.501-556 (Table-15)].
An effort would be made to evolve methodology for documenting and interpreting perceptions on (i) the rights of the foetus, (ii) 'illegitimate' children (iii) child mortality, (iv) childhood disability, (v) childhood discipline, (vi) juvenile crime, (vii) age of marriage, (viii) value of imparted education, (ix) minimum age of employment of young members of the family and (x) generational indebtedness.

Finally, analysis of the social and economic constraints on child's life would be identified and linked with a critique of state intervention and voluntary action in India in protecting children's rights.

II. Statement of the problem:

India today has the largest child population in the world. In 1995 India's 0-18 population surpassed China's.6 With such a wide zone of consideration and multiplicity of cultural patterns and institutional networks, there is tremendous scope for obtaining comparative/contrastive feedback of performance with in India. Country-level aggregates--52% literacy, 0.927 female-male ratio

6. UNICEF: The Progress of Nations, 1997 (New York, 1997) mentions that China had 373.1 million persons under 18 years in 1995 and India 379.8 million (p. 66).
and 80 per thousand infant mortality rate for India of 1991--conceal caste/class/gender/age-based dimensions of empirical reality in priority pockets demanding urgent action.

Realising the existence of a very large number of children in extremely difficult circumstances arising out of destitution, disability, neglect and inhuman social practices, the Indian State has devised legal, administrative and policy interventions and has periodically responded to the approaches proposed by U.N. and its agencies. Enactment of the Juvenile Justice Act 1986, Child Labour (Prohibition and Regulation) Act 1986, Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995, National Educational Policy (1992) and National Plan of Action for Children (1992) are some recent examples. Programme interventions have been formulated for vulnerable children, seeking the co-operation of voluntary organisations in a big way. Institutions of democracy -- legislative bodies, judiciary and the press--have, on various occasions, shown concern for the protection of children at-risk. Still, the situation, as it exists in India today, does not provide basic welfare services to children who need them for survival, protection and reasonable growth.
Eye-openers are district-level figures of performance: less than one percent scheduled caste female-literacy in Jalor (0.76%), Bahraich (0.82%) and Barmer (0.89%), shockingly low 0-6 year female-male ratio in Salem (0.849), Bhind (0.85) and Jaisalmer (0.85) and high girl-child mortality of Bateshwar (327/1000 live births by age five in 1991). Likewise, weaknesses of enforcement of law and poor standards of childcare get highlighted when individual cases of child-abuse are followed up, with action-taken details, till the end.

The case of Rohit is a recent example. Rohit, an eleven year-old inmate of New Delhi's Kasturba Niketan Boys' Home (set up under the Juvenile Justice Act, 1986) died in the first week of March 1996 after being tortured for a week by an 18 year-old inmate and de-facto caretaker. The post-mortem report established that the boy died of internal bleeding as a result of being battered with blunt-edged weapons. Burn marks of cigarette butts were found all over Rohit's body, including his private parts. When the boy died, government officials in the remand home tried to show the incident as a suicide case.
Death of Dennis O'Neil in 1944 in a child-abuse case had led to one of the great reforming documents of the twentieth century (Curtis Report: U.K. 1946) and enactment of the Children Act 1948 immediately thereafter. Rohit's death in 1996 was, after a month's initial ripples, mourned in eternal silence on all fronts.

7. Dennis O'Neil --- a 12-year old boy in the local authority care --- died at Bank Farm, Ministry (Shropshire) on January 9, 1945. As the coroner's jury found, Dennis was in a state of under-nourishment due to neglect, and died from acute cardiac failure following violence applied to the front of the chest and being beaten with a stick. The jury expressed his opinion that there had been a serious lack of supervision by the local authority.

Dennis died at a time when the Government had just, a month back, set up a committee on the care of children [Curtis Committee]. Denis was one of the eleven children born to an unemployed labourer and his wife who made unsuccessful attempts to bring up their family in one room on an income of £2 per week. The National Society for the Prevention of Cruelty to Children initiated a prosecution for neglect: the parents served a jail sentence imposed in default of payment of a fine; and eventually Dennis was committed to the care of the Newport County Borough Council as a child in need of care and protection. The Council was under a duty to board him out. The Local Authority School Attendance Officer found a placement for the boy with Reginald Gough under the impression that "the lad has gone to a very good home and will be brought up well".

Curtis Committee, which discussed Dennis' death in detail, presented a detailed indictment of the jungle of Committees and agencies with the responsibility for childcare. The Committee concluded that the existing confusion in local authority responsibility was acute and dangerous and suggested that (i) the Local Authorities should be required to appoint a single Children's Committee reporting direct to the Council and assuming responsibility for the Council's child care functions and (ii) there should be provision for the responsible Minister to declare a Local Authority in default and give directions enforceable by mandamus.
Rohit's case brings us to another conceptual issue -- the moral vacuum in which the State in India functions. India is a socialist democratic republic, but like all countries, its government always falls in the hands of a few who take key political, economic and social decisions and monitor them.

There is a device of checks and balances, but in the absence of developed system of administrative law to check discretion, inadequate financial empowerment of the local self-government and overall amnesia and individualism prevalent in our society today, the only major positive interventions experienced so far have been judicial. Judicial interventions, too, have inherent limitations in areas of policy-making requiring large-scale administrative reforms, institutional re-structuring or re-fixation of resource-allocation priorities.

There are several ways in which an old order conserves itself in face of demands of justice. Justice demands protection of the vulnerable and greater pace of progress for the worst amongst them\(^8\), while the reality exposes absence of broad-mindedness,

\(^8\) Refers to Rawls' Second Principle of Justice. "Social and economic inequalities are to be arranged so that they are to the benefit of the least advantaged". John Rawls: *A Theory of Justice* (O.U.P.: 1972) p.302.
fair-play and sacrifice on the part of the operators of the system to allow even an equal pace of development. The executive and legislative wings of the State have tremendous power to delay or defer decisions even remotely touching fragile pyramids of political and economic support to the persons/groups in command. Here the contributions of Peter Bachrach\(^9\) assume significance. Bachrach has shown that power involves not only 'decisions' but also 'non-decision' in areas where interests of the ruling-groups lie in perpetuating the status quo. It is possible to identify escape-routes and mechanisms through which status quo of an order is maintained and allowed to get deepened during periods of inaction.

Limitations of State's capacity in terms of its reach and resources\(^10\) and abstinence to risk touching family-life\(^11\) have been two well-known excuses offered by the Indian State for its preferred inactivity in implementing children's access to primary education and many related matters. State should have the capacity to

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10. Waves of educational expansion have not touched a substantial number of poor and socially excluded Indian citizens. 1991 Census showed that 70.40% scheduled tribes, 60.7% women and 60.5% scheduled caste persons were illiterate. World Development Report 1994 (p.139) mentions that in 1992 average number of years of
schooling for Indians (aged 25 plus) was 1.2 for females and 3.5 for males. So, even where educational expansion has touched people, it has touched marginally.

Resources alone cannot transform conditions without commitments from state and central governments, teachers and parents.

Assessment, however, is that around four percent of the G.D.P. is required to be spent each year to realise the goal of universal primary education in India, against 1994-95 expenditure of 1.2% G.D.P. (V. K. Ramchandran, et al. : 'Investment Gaps in Primary Education' Economic and Political Weekly, Vol. 32 (1&2), 1997. p.44.

N.S.S. Data on household - expenditure on education (1986-87) shows that, on an average, a rural household spent Rs.1166 per child in India during 1986-87 on primary education in government schools on tuition and examination fees (86%), private coaching (9%), books and stationary (4%), etc. It is a large sum of money for the rural poor to afford. (Tilak J.B.G.: 'How Free is Free Primary Education in India? Economic and Political Weekly, Vol. 31 (5&6), 1996. p.363).

Review of social sector investment during India’s Eighth Plan (1992-97) reveals that target for education sector (4.52% of public sector investment) was achieved only to the extent of 86%. At Seventh Plan prices, this shortfall comes to Rs.5,063 crores, primarily due to drastic shortfall in meeting Eighth Plan targets for the state governments (for 1992-97 period) for education. Approach Paper to the Ninth Five-Year Plan: Planning Commission (1997: Para 1.28).

11. "In all these countries there eventually developed the view that family could no longer be relied upon as the institution for the transmission of those values, attitudes, skills, and knowledge that were essential in the modern world (p. 153)... Parents were told by the state that no matter how great is their need for labour or income of their children, they must nonetheless relinquish their child to school for a part of the day... (p. 181) ... (In India) those who control the education system are remarkably indifferent to the low enrolment and high dropout rate among the lowest social classes (p.6)... They accept the notion that the poor have the right to employ their children, though the 'right' means that the state ought not to force children to attend school over the objections of parents. (p.202)."

encounter privileges and aspirations obstructing greatest benefit to the least advantaged and state-intervention should open increasingly greater choices for the subaltern groups (and dependent family members among them). Constructively, there has to be a vision of substantive and procedural justice on major issues of human existence based on a system of rights.

Can we have a 'system of rights' for children? Habermas\textsuperscript{12} has recently argued that the internal relation between private and public autonomy requires a set of abstract rights that citizens must recognize if they want to regulate their lives together by means of legitimate positive law. Legitimacy of rights, legitimation of law-making processes, legitimacy of a political order and legitimation of the exercise of political power are four components of a system of rights envisioned by him. This, indeed, is a tall order for the generation which controls organized life, but road to the liberation of dependent family members and subaltern groups


\textsuperscript{13} Habermas has outlined a whole typology of crises: an economic crisis, a crisis of rationality of legitimacy, and of motivation. He has shown that contradictory demands on state intervention expose the true nature of the states in capitalist democracies and, thus, create crises of rationality and legitimation.

lies in interpreting and reforming all the four components of the system in rights. There is no other way.

It is possible to examine legitimization-crisis of state-intervention\textsuperscript{13} in India's child welfare sector in protecting core human rights of children at-risk\textsuperscript{14}. Acceptable parameters of

\textsuperscript{14} "Countries of South Asia have a number of laws embodying some of the rights of the child which are to be found in the U.N. Convention on the Rights of the Child. But adequate legal framework for protection and enforcement of the rights of the child is lacking in most of these countries. It is, therefore, necessary to enact laws for the purpose of giving effect to the rights embodied in the Convention and also to bring our existing laws in conformity with these rights. We in South Asian countries must also realise that it is not enough merely to enact laws, but it is equally imperative to ensure that such laws are implemented. We have a plethora of social welfare laws in our respective countries, but there is poor implementation and many of these laws have remained mere paper tigers. There are several reasons for the sad state of affairs, but the major ones are: the lack of political will, bureaucratic inefficiencies, judicial indifference and, above all, lack of sensitivity on the part of the people" (p.11).


analysis could be:

- Reconciliation of the right to life of foetus with right of life of their mothers.
- Equal protection to marital and non-marital children in family support and inheritance.
- Minimum standards of non-discriminatory health, education and social security for children with disability, mental retardation or mental health ensured under law.


Legal remedies for child-abusing discipline by parents and teachers.

Quality of care and protection in juvenile justice institutions.

Socio-demographic indicators of the age of marriage and legal status of child-marriage.

(iii) Amita Dhanda: Legal Order and Mental Disorder (New Delhi: Sage 2000).


<table>
<thead>
<tr>
<th>Public Interest Litigation</th>
<th>Allegations Proved</th>
</tr>
</thead>
</table>
* Sexual Abuse of Children in State custody  |
* Denial of Basic Human Treatment.  |
| 3. Cri A No. 300/1985 Sheela Barse vs Secretary, Children’s Legal Aid Society | * Malfunctioning of Observation Homes in taking custody  
Producing before the Juvenile Court improper case work and delay in repatriation/restoration. |
4. CR No. 2258, Guwahati/1988 Gautam Uzir vs. Assam Seva Samity
   * Starvation of the inmates of a Destitute Home for children

   * Children in Adult Prison.
   * Abuse by Hardened Criminals

   * Illegal Detention of Children
   * Children in Adult Prison

   * Children in Adult Prison
   * Sexual Abuse of Children with the Help of Jail Officials

25. Juvenile justice institutions are not adequately spread in India. There were 466 districts in India in 1991, while the numbers of Juvenile Courts were only 190. Sixty percent districts did not have Juvenile Courts. Likewise, forty-four percent districts in India did not have Welfare Boards for Juveniles in 1991. Latest position has changed only marginally.

State of Madhya Pradesh had 45 districts in 1991, but only 21 districts with Juvenile Court and Welfare Boards for Juveniles. 2,727 Boys and girl were apprehended in 1994 in the State under I.P.C. and Special and Local Laws, but the State had capacity for only 1,300 boys and girls in its 29 Juvenile justice institutions.

SOURCES:
(i) Ministry of Welfare: Background Note For Meeting on Juvenile Justice Administration (7-4-1992) (Unpublished).


27. Child Marriage Restraint (Amendment) Act, 1978 raised the age of marriage to 18 for women and 21 for men. However, non-age marriage does not become void under the personal laws of Hindus, Muslims and Christians. So we have in India, child wives and child widows. Only under the Special Marriage Act, 1954 and Parsi Marriage and Divorce Act (after 1988 Amendment) non-age marriage is void. 59th Law Commission Report gave a thought to the problem of child marriage, but from a conservative perspective. There is still scope for law-reform in this area, even after taking care of children of non-age parents.
➢ Value of imparted education in improving life-chances\textsuperscript{28} of the poorest households, in terms of wages earned by the labourers\textsuperscript{29} and production on small farms\textsuperscript{30}.

➢ Activities of 'out of school'\textsuperscript{31} children and their economic role\textsuperscript{32} in family well-being.

\textbf{28.} We can refer here to the research on the equality of opportunity and worth of school education in providing improvements in life chances of children from poor households:


\textbf{29.} Economic studies of education production functions have thrown new light on this neglected aspect. Study by Hanushek is an example.


\textbf{30.} A recent publication of World Bank (\textit{Economic Developments in India, 1995}) has a relevant paragraph on this aspect:

"Studies of the impact of primary education on wages and agricultural productivity in India are few, and most have used data from the 1960s and 1970s. However, the available research findings mirror international experience. Social rates of return ranged from 13 to 16 percent while the private return range from 15 to 21 percent. Agricultural productivity and wages of Landless labourers were significantly increased by education. These positive effects on earnings of primary education hold for all caste groups, but scheduled castes seem to benefit the most." (p.110). Assumptions need close scrutiny.
31. **Main Activities of Children (5-14 Years) in India (1961-91):**

Data below shows that 'Out of School Children' should have been our research/policy priority, but we know very little about them.

<table>
<thead>
<tr>
<th>Year</th>
<th>In School</th>
<th>Out of School</th>
<th>Neither Student nor Worker</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Boys: Students</td>
<td>Workers (Main+Marginal)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Number</td>
<td>%age</td>
<td>Number</td>
</tr>
<tr>
<td>1961</td>
<td>2.36</td>
<td>39.8%</td>
<td>0.87</td>
</tr>
<tr>
<td>1971</td>
<td>3.25</td>
<td>41.3%</td>
<td>0.78</td>
</tr>
<tr>
<td>1981</td>
<td>4.91</td>
<td>52.5%</td>
<td>0.81</td>
</tr>
<tr>
<td>1991</td>
<td>6.19</td>
<td>56.6%</td>
<td>0.62</td>
</tr>
</tbody>
</table>

As per the estimate of the National Sample Survey (50th Round: for the year (1993-94), out of 0.93 crore working children (0-14 Year in India, 0.41 crore (44%) where wage-earning children. The rest have been classified together as "non-wage household workers and self-employed" (0.52 crore).

32. (i) Compared to the National Sample Survey Data for 1987-88 (43rd Round), the situation appears as under:

The details above show that, in spite of a slow but marked decline in the number of working children (and wage earning children among them), there has been an increase in the number of wage-earning young children in both agricultural and non-agricultural sectors. Participation of young children increased substantially in agriculture.

(ii) Analysing the data of late 1950s, Rosenzweig & Evenson, too, (Fertility, Schooling and the Economic Contribution of Children in Rural India’ *Econometrica.* Vol. 45 (5) (July, 1977 Pp. 1065-79) showed that economic contribution of children was high enough to discourage investments in skill obtained in schools (p.1077).
Bondage of children on account of parental indebtedness\textsuperscript{33}.

33. Refers to the phenomenon of bonded labour (and pledging labour of children for repayment of debt) which despite (i) a series of legislation since 1920, (ii) Article 23 (1) of the Indian Constitution, (iii) landmark judgments of the Supreme Court, (iv) massive expansion of public sector banks in rural and remote areas since 1969 and (v) priority lending policies of the R.B.I., has continued in tribal areas. Cases are being detected every year by the voluntary organizations working for children and landless labourers. Identification of 2,50,289 bounded labourers has been reported between 1976 & 1992 by the Labour Ministry of India.

Incidence of indebtedness among tribals increased from 14.47\% in 1975-76 to 33.77\% in 1982-83 as per N.S.S. data and, more important, 72\% of indebtedness of tribals in 1982-83 was to private moneylenders, shopkeepers, friends and relatives.

Sociologists and social historians have studied indebtedness among Bhils also. Jan Breman for example, \textit{Patronage and Exploitation: Changing Agrarian Relations in South Gujarat, India} (Berkeley, 1974) describes Hali Pratha, a form of debt-bondage:

"Attachment usually arose when a farmer advanced the means for agricultural labourer's marriage by paying all the costs involved, the payments being mostly in kind and consisting primarily of food for the marriage party..... Apart from the Hali himself providing agricultural labour, the master usually also commanded the services of his Hali's wife who was employed as a household maidservant, and Hali's growing children (among whom the pre-adolescent sons tended the livestock). Together and with a good deal of mutual substitutability, they carried out all the task which had to be performed on the land, in the house, and around the farmer's courtyard". (p.127).

Competency requirement of a child victim to give evidence.\(^{34}\)

Parameters cover a wide range. Therefore, it is proposed to examine gaps between the child-rights norms and facts in a neglected district of our country on the basis of these parameters of analysis so as to understand legitimation-crisis\(^{35}\) on life and death questions affecting poverty-stricken children in a unit-area. Structures of exploitation are built on helplessness, but continuation of irrational domination on the lives of the helpless people proceeds on constant condemnation of their families, work ethic and experienced past. Sociological study of status and perception on some of the core issues of children's rights (described in the paragraph just above), therefore, is expected to reveal the rationality of local behaviour.

\(^{34}\) Reference here is to the recent amendments in U.K. during 1989-94 in according greater acceptability to children's evidence in criminal and civil cases affecting their future. Section 96 of the Children Act 1989 r/w The Children (Admissibility of Hearsay Evidence) Order 1993 now permits hearing evidence of children capable of justifying their facts before a court in civil cases. In criminal cases changes are more radical. Under Section 33A of the U.K.'s Criminal Justice Act 1988 (1991 & 1994 Amendments), child's evidence in criminal proceedings are to be recorded unsworn and are to be recorded necessarily unless it appears to the court that the child is incapable of giving intelligible testimony.

III  Hypothesis/Objectives of the Study:

Justice is the first virtue of institutions. Existence of institutions created in a system can only be justified, if they are capable of withstanding undue pressure, are harmoniously integrated with clarity of vision and are uncompromising on issues of justice. Laws, services and social systems, no matter how efficient or utilitarian, should be reformed if they perpetuate injustice.

Meaning and perception of justice differ from person to person due to social/historical conditioning and as per the level of resignation accepted by the individual concerned vis-a-vis the structure of domination, but moral requirement is universally clear. Justice means fairness and institutions exist to ensure maximum benefit of social co-operation to the least advantaged in society to allow him/her build capabilities.

Moral foundation of justice, thus determined, draws attention to the role of law and prospects of development of democracy in contemporary societies to grant justice to children at-risk. The loved ones are supreme assets, while the marginal ones live in
situations of perpetual conflict with the wielders of power over their bodies, time, labour and life-chances. Rights-based approaches to justice are, therefore, required to tactically advance the core interests of survival, protection and development.

Adoption and ratification of the U.N. Convention on the Rights of the Child by India signified its acceptance of a statement of children's rights which, in many parts, is considerably in advance of the existing laws and practices in India. Child Welfare Administration has during the last eight years given no attention to these rights and has given to the treaty the same treatment which it has given to Part-IV of the Indian Constitution since past fifty years -- i.e. the status of manifesto rights.

In view of the facts mentioned above, the study will underline an urgent need to undertake reform of laws, institutions and institutional arrangements devised in India for the at-risk children, insights for which would emerge from the hard facts obtained from the systematic study of the field situations.
Jacques Donzelot\textsuperscript{36} has already advanced a hypothesis on these issues. He believes that State intervenes through its agents (juvenile courts, teachers, doctors, social workers, psychiatrists etc.) and policies (subsidies, social securities, investment incentives etc.) in the interest of achieving social control over the rearing and development of children as potential employees of the dominant economic system. The Study will examine this hypothesis and explore whether State-intervention in family-life through 'children's rights approach' would provide a necessary corrective. Dingwall and Eekelaar (1988)\textsuperscript{37} have hinted in their case-study of U.K. that the limitations imposed by the liberal political theory in adequately intervening in family-life do not negate crucial significance of State-intervention in "private domain" to achieve a just generational order. Even feminist authors [Land (1978), Wilson (1977) and McIntosh (1978)\textsuperscript{38}], who view family as an ideological construct rather than a given entity, have said that State is capable of constructing the family through its welfare policies. The study would, therefore, examine whether correctives in welfare policies are possible from the point of view of the weakest members of the families -- i.e. children.

\textsuperscript{36} The Policing of Families (London: Hutchinson, 1978)


Objectives of the Study:

1. To document social and economic constraints on child’s life in India’s least literate district.

2. To assess the extent and range of problems experienced by those amongst them at-risk, needing prompt intervention.

3. To examine laws, institutions and standards of care and protection through state-intervention & voluntary action in the context of village setting.

4. To study relationship between international child-right norms and their counterparts at the domestic level with a view to discussing the problems that may arise in balancing competing and conflicting rights.

5. To record perceptions of social claims for institutionalised protection relating to children, and,
6. Suggest areas of reform highlighting fiscal crisis of the Indian Welfare State in maintaining reasonable balance between accumulation and legitimation functions\textsuperscript{39}.

**IV Conceptual Framework:**

As details of objectives above show, the study proposes to be an exploration of the gap between facts and norms through examination of social reality of ethics. By implication, thus, the study shall screen validity of laws, and institutions set up to actualise laws. Normatively, there is unprecedented international consensus on empowering children with legal rights on all matters, but domestic perceptions differ and there is, in actuality, no efficacy at the sites of children's day-to-day struggles.

\textsuperscript{39} J.O' Connor [The Fiscal Crisis of the State (New York: St. Martin Press, 1973)] and I. Gough [The Political Economy of the Welfare State (London : Macmillan, 1979)] have shown that State in capitalist society has two contradictory functions, accumulation and legitimization. They identify three main categories of expenditure: (a) social investment: (projects and services that increase the productivity of labour), (b) social expenses (project & services which a required to maintain social harmony and (c) social consumption (project and services that lower the production costs of labour). The first two, it is argued, are in contradiction with the third.
At the philosophical level, Habermas\textsuperscript{40} has taken up the broad issue of facts and norms. Conceptualising law as a 'system of rights' (p.124), Habermas offers sociologically informed account of the rule of law and the constitutional state and examines whether, in the contexts shaped by powerful interests and complex functional requirements, it is possible for the institutions to realize ideals of fairness proposed by John Rawls. He is of the view that answers to the problems posed by soulless bureaucratization; residual welfare and factional enrichment of privatization in democracy can only be given by comprehending 'internal relation between rule of law and democracy.' These two, Habermas says, get internally related through deliberations and discursive sovereign will-formation on system of rights. If system of rights is to be determined through genuine discourses, how can the system of discourses be structured to ensure maximum participation of a country's ultimate sovereign power i.e. its people? Linkage essentially is through State, its proper institutional restructuring at the grass-root level, building in system of performance-accountability and allowing vibrant and articulate public-opinion grow in voluntary organizations. "The State becomes necessary

as a sanctioning, organizing, and executive power because rights must be enforced, because the legal community has needs of both a collective self-maintenance and an organized judiciary, and because political will-formation issues in programmes that must be implemented," Habermas writes. At the same time, however, he considers it necessary to distinguish between 'communicatively generated power' and 'administratively employed power'. "How these two processes -- the spontaneous forming of opinion in autonomous public spheres and the organized extraction of mass loyalty -- interpenetrate and which overpowers which, are empirical questions."

Seen from this perspective, relevant empirical questions for our study, therefore, are (i) role of popular sovereignty in examining international child rights norms (ii) legitimacy of State interventions in child welfare, (iii) rationale of State inaction in protecting interests of children at-risk and (iv) evidence of voluntary grass-root organizations in expressing communicatively generated power on life and death questions of children.

41 Ibid: p. 134
42 Ibid: p. 483