

India Alliance for Child Rights (IACR)

An Affiliate of SANGA: South Asia NGO Alliance

Working for all rights for all

children

IACR Secretariat, CISRS House, 14- Jangpura-B, Mathura Road, New Delhi-110014, India
Tel: 91-11-24370959 , Tel/Fax: 91-11-24376025, Emails: iacrindia@yahoo.com

Written submission to the UN Committee on the Rights of the Child for the 2005 Day of General Discussion on the issue of: **Children Without Parental Care**

Children's Right to Parenting Care and Support

Parenting should honour the child's worth and best interests

Four of the basic tenets of CRC implementation are (i) the acknowledgement that the human rights of children are indivisible, (ii) the guarantee of non-discrimination, and (iii) adherence to the principle of the best interests of the child, and (iv) recognition of the child as a person.

Working from the perspective of these tenets, the India Alliance for Child Rights has initiated and organised a consultative process¹ involving a cross-section of Indian NGOs to examine the subject of children deprived of parental care in the deeper contextual frame of the **child's right to parenting**. This examination has uncovered a range of sites and situations where children are denied this right, even while not physically 'separated' from their parents by death or external misfortune.

In this context, we find the proposed treatment of the subject set out for the 2005 Day of General Discussion unduly self-limiting.

In noting the implicit recommendation to restore the displaced or separated child to the family, we invite attention also to the best interests of the alienated child, the child whose rights are at risk within the parental or family milieu, the child who may be housed and fed but is denied dignity and fair opportunity, and children cut off from parenting due to negative social practice. Of special concern in developing countries is the absence of alternative services and supports, notably State provisions, for children in need of parenting.

We are concerned that the thrust of the 2005 General Discussion programme may be more on deprivations arising from 'acute' situations (such as those experienced by orphans or child

¹ Two inter-state consultations held: Bangalore 23-24 July 2005 (X NGOs), New Delhi: 6 Sept 2005 (. Full listing of NGOs at end of document.

victims of of conflict and physical displacement) than on those 'everyday' situations -- possibly less visible -- where many more children miss out on their entitlement to parenting.

We therefore recommend to the Committee a deeper and more comprehensive examination of the issue of the child's right to parenting, with a more conscious and inclusive appraisal of the diverse range of settings and situations in which this right may be diluted or denied. We see a conceptual distinction between the terms 'parental' and 'parenting.'

While we fully appreciate that the programme structure and time-table as already chalked out for the 16th September discussion may not allow for this wider-ranging examination, we are submitting our perceptions and arguments at this time to propose that the 2005 Day of General Discussion could initiate a process for the more in-depth and comprehensive consideration which we recommend. We hope that our paper will stimulate attention to deeper concerns about parenting, and generate interest in further examination of the wider issue.

Being an India-based alliance operating as a country-level NGO coalition for CRC realisation, we have naturally discussed the theme in our country context, and have explored the India setting for insights into how and where children lack the parenting they deserve. However, we believe our consultations have thrown up questions and concerns for wider international attention -- so we offer our findings and our views to the Committee, and to NGOs around the world.

If the State acknowledges children's right to genuinely benevolent and fair parenting, it must include alternative supports and also laws in its official provisions for children. Help-lines offer one facility - but they must be matched by practical intervention, referral, rescue and protection facilities. Standards of such facilities that do exist are often very poor.

If it falls to the State to intervene on children's behalf where both family and community fail to operate in their best interest, then the State must either have or develop mechanisms for intervention and services for alternative care. India, for example, lacks adequate mechanisms and services. It can be assumed that this inadequacy would be true of many developing countries. In countries which have 'transited' out of previous welfare systems, services and supports may still endure in name, but no longer exist in fact.

Small children in need of parenting may not know that they are unfairly deprived, and may not know they should complain - or know how to. Older children may be unaware of how and where to seek help or attention, and thus unable to do so. Social structures and attitudes may be such as would discourage rather than encourage children to protest their condition, or even question it, much less to seek help elsewhere. Even when they do seek assistance, the lack of services often results in the child returning to an unkind home. (e.g. Police 'Help' services which were being experimentally developed in Jordan reported this lack of shelter and holding facilities as the major constraint to their ability to aid children in need; virtually all the children were reverted to their family settings; some ran away).

Children who run away from home often admit that it was mistreatment or neglect that drove them away. Where there is no real service reaching out to shelter and protect them, they go from one bad situation to another.

What of the majority of children, who do not run away from home? How can the State ensure their security and well-being – or even just a fair deal? From the legal perspective, such children may not even be considered to be in any kind of trouble or distress. And yet, they are. Violations of rights to parenting may not be classifiable as offences, but they remain violations. **A childhood confined within unjust boundaries cannot be an acceptable manifestation of good parenting.**

Part I: Parenting -- the basic right.

Our first question : Do we define ‘parental’ care as care given by parents, or care which amounts to parenting?

It seems to be assumed that ‘parental care’ is loving. Is this always a reasonable assumption? When parental attention is more like parental authority and control, where do the child’s best interests balance with it?

Parenting implies holistic support for the survival, growth, development, security and happiness of the child, encompassing both material and psycho-social dimensions of the child’s nurture and upbringing, with guidance, fairness and protection implicit. Such parenting should ideally come from a child’s natural parents – but it can also come from others, within and outside the family unit.

The issue deserves to be examined in the variety of settings where children live out their childhood without adequate parenting -- as well as in some in which the denial of life is itself the evidence of absence of parental care.

There are the diverse instances where parents are present, and do pay attention to their children, and do deliberately cut off parenting by either selling children into bondage, forcing them into labour, or marrying them off.

There are instances where a child is housed, clothed, fed, even schooled – but not given either love or nurturing care. Parents and family decision-makers do not necessarily see this as a shortfall in parental attention. Yet such situations are denials of parenting.

If a child has special needs, such as in the case of physical or mental disability, parental attention may extend to providing basic material needs, but stop short of providing opportunity for the child to reach full potential. In some conservative and traditional societies, such children are habitually hidden from view. This is considered parental duty, but it violates the child’s right to real parenting.

There are instances where the parent, or parents, may be un-wed or so young (especially the mother) as to be incapable of understanding or providing parenting to the child.

All such situations are examples of children being without parental care in the sense of parenting. It is more than likely that only a minority of such cases occur in situations of external disruption of normal life.

What do we understand by parental care? CRC Article 20 defines children without parental care as those “who have been removed from or deprived of the family environment.”

The Convention positions the family as the “fundamental group of society and the natural environment for the growth and well-being to all of its members and particularly children.” It further states, “parents or, as the case may be, legal guardians have the primary responsibility for the upbringing and development of the child” as the “best interest of the child is their primary concern.”

Despite its good intent, CRC Article 20 may be faulty. It does not invoke the other CRC articles which relate, or address whether the ‘family environment’ in a particular case is in fact good or bad, caring or uncaring -- it assumes that it must be positive because it should be. Would a better definition need to say whether such children are those who lack the nurturing attention of one or both parents, and address whether this includes lack of parental presence? Would it not need to go beyond physical parental presence, and an environment technically ‘family,’ as against ‘institutional,’ or even ‘unsupportive’? The parents or ‘legal guardians’ may not be fulfilling their primary responsibility. It is worth noting that a child removed from a negative ‘family environment’ may actually have a better chance of enjoying some ‘parenting,’ even with natural parents absent. The onus of determining what is best for the child may fall on the State or on Society: the child deserves the support of appropriate mechanisms to make that determination.

* What ‘qualifications’ determine a parental relationship with the child? Biological parentage. Or also the acquired status of foster or adoptive parent.

Such a relationship may be either beneficial or harmful to the child. Thus parental presence or proximity or access may not always be the equivalent of positive parental care.

* What establishes or determines a parenting relationship? Blood-ties, proximity and other ‘qualifications’ and circumstances can create such a relationship. Those who provide parenting include grandparents, family elders -- including siblings who are also minors -- persons outside the biological family, including care-givers in institutions.

If parenting should provide the child love and nurturing, protection, security, guidance, and consideration for the child as a person, examples of the denial or lack of parenting abound in both traditional and non-traditional societies.

Traditional and contemporary perceptions of parental roles and responsibilities, as well as of how children should behave and be brought up influence actual treatment of children within the radius of family control. Ignorance of rights and the blinkers imposed by custom may be as frequently to blame as conscious or wilful disregard of children’s rights. All too often, such treatment is seen as ‘best for the child,’ and even regarded as protective.

Children Disadvantaged by Deficient Parenting

We have no intention of challenging the concepts of the child’s right to family or the parent’s right to bring up the child, but feel it is necessary to discern not only stark situation of loss or denial but also the more nuanced evidences of situations where the rights of the child are

violated. Every child has a right to care and nurture which ensure an environment for holistic development.

Children without parenting care fall broadly into two categories:

- i) **Children living within the family structure**
- ii) **Children without family**

Children living within the family structure

- Step-children.
- Children who are unwanted because they are female.
- Children with special needs (e.g. with disabilities) and the family being unable to provide quality care in absence of support systems at the community and state level.
- Children who have siblings with special needs and whose family is unable to take care of the “normal” child being left with little time, resources and energy left after taking care of the special child.
- Children of working parents who have long hours of working and the missing support systems at the community and state level and are not able to take care of their needs beyond the basics.
- Poverty-affected families, which are unable to provide basic material care to the children, and this affects the overall quality of care. In such cases, deprivation of basic human rights afflicts the family as well as the child.
- Children who are victims of abuse, rape and violence within the family
- Children of divorced or separated parents, who lack full care, or feel themselves deprived.
- Child-headed families/households, such as those affected by HIV/AIDS, Leprosy.

Children without family

Children living in orphanages / foster care homes / homes for children with disabilities

Children in state run institutions

Children living on their own / child-headed groups / Runaway children / Street children /

Children at work / Child labour / Abandoned children

The issue of reunifications of families may NOT be always in the best interest of the child (abused child or the child facing domestic violence)

Non-Negotiables:

- To view the child as a person with an identity and consider his/her views on “good parenting”
- Respecting Article 18 of CRC acknowledging parents’ joint responsibilities as well as the supportive obligations of the State
- The family as socio- cultural environment must be conducive to enabling the child to develop his/her identity in a holistic manner
- Survival, Protection, Development and Participation, with respect for the child
- Sensitisation and participation of the child in discussions that are directly linked to his/her rights, or in any way affect his or her conditions of life.
- Ensuring parental motivation to include emotional care along with character building rather than only providing for basic needs
- Addressing the entitlements of the child with special needs

- Parenting can be ineffective because of ignorance, willful neglect or helplessness. In such situations, the State must assist, rather than leave it to the goodwill of the community or Society.
- Article 17 of CRC: Child’s access to appropriate information should be respected while taking decision on the child’s “best interest.”

The Need for Standards – but how to impose them?

Rights can be secured for children through a range of sources and actors; the family, and parents, are a primary source, and almost always the first potential source. The CRC Implementation Handbook ² reiterates in every checklist for every CRC article that “The Convention is indivisible and its articles interdependent.”

The child denied of parenting care within or outside the family situation is denied of the rights that CRC confers. All these denials have the following rights in common:

Article 20: Right to family environment

Article 2: Right to non-discrimination

Article 12: Respect for the views of the child

Article 41: Right to respect for existing human rights standards

Article 2, the non-discrimination principle has been identified as a general principle by the Committee on the Rights of the Child. The other general principles include:

Article 3(1): The best interests of the child

Article 6: Right to life

The listing of children given in the table is a subset of the comprehensive list of children identified by the Committee as children affected by denial. The situations listed in the table can be isolated or multiple

The Vulnerable Groups	Rights Denials as per CRC
Children in trafficking (economic and other reasons)	Article 18: Parents joint Responsibilities assisted by State Article 35: Prevention of Abduction, sale and trafficking Article 37: Torture, degrading treatment and deprivation of liberty
Street children	Article 18: Parents joint Responsibilities assisted by State Article 21: Right to Education Article 24: Right to health and Health Services Article 26: Child’s Right to benefit from social security Article 27: Child’s right to an adequate standard of living Article 37: Torture, degrading treatment and deprivation of liberty
Migration of either parent, or of the child. Instances where the child runs away.	Article 18: Parents joint Responsibilities assisted by State Article 26: Child’s Right to benefit from social security

² Page 28, Implementation Handbook for the Convention on the Rights of the Child.

Children from marginalised groups/settings, who are denied of parental care due to abject poverty, migration and social isolation	Article 7: Birth registration, name nationality and right to know and be cared for by parents Article 26: Child's right to benefit from social security Article 30: Child's right to enjoy his or her culture, practice of religion Article 37: Torture, degrading treatment and right to liberty
Orphans and abandoned children	Article 7: Birth registration, name, nationality and right to know and be cared for by parents Article 8: Right to preservation of identity Article 26: Child's right to benefit from social security Article 37: Torture, degrading treatment and right to liberty
Children suffering from or affected by HIV/AIDS	Article 24: Children's right to health and health services Article 26: Child's right to benefit from social security Article 27: Child's right to an adequate standard of living Article 37: Torture, degrading treatment and right to liberty
Children of commercial sex workers	Article 7: Birth registration, name, nationality and right to know and be cared for by parents Article 26: Child's right to benefit from social security Article 37: Torture, degrading treatment and right to liberty
Girl Child	Article 6: Right to life and maximum survival and development Article 27: Child's right to an adequate standard of living Article 28: Right to education Article 31: Child's right to leisure and play
Child Labour	Article 28: Right to education Article 31: Child's right to leisure and play Article 32: Abolition of Child Labour Article 36: Protection from exploitation
Child victim of domestic violence and abuse from family members and outsiders	Article 19: Right to protection from all sorts of violence
Children affected by conflict and disaster situations	Article 6: Child's right to life and maximum survival and development Article 26: Right to benefit from social security Article 38: Protection of Children affected by armed conflict Article 39: Right to rehabilitation of child victims
Economic inability of parents separates children (Migration/Sale of child/Street children/Run-away children/Children trafficked for economic	Violation of almost all the rights of the child if there is no intervention from the state or civil society

and other reasons	
Loss of support systems for family to look after children	Article 26: Right to benefit from social security
Disaster situations	Article 3: Best interests of the Child
Breakdown of marriages/ Single parenthood	Article 3: Best interests of the child Article 5: Right to parental guidance and the child's evolving capacities Article 26: Right to benefit from social security
The married child	Article 28: Right to education Article 31: Child's right to leisure and play
Separation due to individualized and special needs of children	
Extreme biases, prejudices within the community because of physical / mental disability	Article 23: Rights of disabled children
Separation due to conflict with law - criminalisation of children <ul style="list-style-type: none"> ▪ Children of custodial parents ▪ Institutionalized parents and lack of support to the child 	Article 5: Right to parental guidance and the child's evolving capacities Article 9: Child's right not to be separated except when necessary for best interests Article 26: Right to benefit from social security Article 39: Right to Rehabilitation
The child of working parents who are absent for long hours	Article 5: Right to parental guidance and the child's evolving capacities Article 12: Right to respect for the views of the child Article 13: Child's right to freedom of expression Article 18: Parents' joint responsibilities assisted by state.

Part II: Examples from the Indian Scenario:

India shares with many traditional societies a rather authoritarian attitude towards children, in which parental loving and approval are intertwined with the child's obedience to adult dictates, and a persisting adherence to old norms and customs which reflect a social order more than a rights frame.

In such a milieu, the perception of what is correct parenting is heavily influenced by what Society is seen to approve.

As these regulatory social norms confront pressures of transition or exposure to other, newer, values, insecurities for the child often increase. In India, the transition from the joint family to the nuclear unit may remove the child from the older, more hierarchical structure of a household governed by a senior patriarch or elder, but can also deprive children of some of the comforts of parenting and care that grandparents, uncles and aunts provide.

In the absence of adequate State machinery and mechanisms reaching out to children, the gradual breakdown of the joint family system can be a loss for the child. At the same time, the oppressions and within-family abuses that occur in the complex joint family setting are a real risk for children.

While the Indian State is slowly realising that it has a parenting duty itself towards the nation's children, it presently offers few services and supports that could compensate a child for the lack of parenting at home, or in the community. The question arises: how then

can the country provide its children all the rights inherent in parenting? The mere presence or proximity of natural or legal parents cannot be taken as guarantee of parenting.

Instances of parents providing discriminatory or negative parenting:

Certain questionable practices – old and new – defy human rights principles and existing national laws. At every stage of childhood, children in India face a range of discriminations which Society either condones or approves. Parents themselves, and notably mothers among them, seem socially pressured to conform to negative practices. Children pay the price.

Parenting and Gender Bias

In its Concluding Observations of February 2004 on India, the Committee had pointed to the need for public education to prevent and combat gender discrimination within the family, and had expressed concern at the persistence of discriminatory social traditions, attitudes and practices. [Para 30 of the 2004 Observations repeats Para 33 of the 2000 Observations].

Early Disposal of Daughters

Parents and families are complicit in three deliberate denials of parental care to girl children: sex determination followed by foeticide; arranging for infanticide, and arranging for child marriage (more of girls, but also of boys). Most of them would regard early marriage of daughters as a caring act – to prevent insecurity or dishonour. The Committee’s February 2004 Concluding Observations on India comment on harmful traditional practices (Paras 58, 59) that could damage the health, survival and development of both girl and boy children, and recommended corrective sensitisation measures. It expressed particular concern at the persisting high rate of early and forced marriages of girls. The Government of India’s 2005 Country Report on Women ³ admits that child marriage persists in many parts of India. Perceived by Society as an important part of ‘parental care’ and responsibility, the practice dooms millions of Indian girls.

1. Rights before birth: India’s National Policy for Children (1974) memorably declares national commitment to the child ‘before and after birth.’⁴ The policy stands, but 30 years on, Indian society has another opinion. The female-male numbers gap among children is rapidly reaching crisis proportions. From 1961 to 2001, Census of India figures show that while the female-male ratio overall fell from 941/1000 live births to 933/1000, the ratio in the 0-6 age group dropped from 976/1000 to 927, and the ratio in the 15-19 age group has fallen from 929 to just 858/1000 live births. The fallout of foeticide, infanticide and early neglect is now showing up in the adolescent cohort.

The question of the rights of the unborn child, including rights to nurture and the ‘anticipatory’ parenting reflected in care during pregnancy, is entangled in the “right to life” debate, but it is worth noting that in the case of preventing survival of unborn girls in India, it is also a casualty of non-discerning promotion of family planning. Couples are encouraged to opt for the ‘small family’ or two-child norm; they opt for sons.

³ Platform for Action: 10 Years After,’ India Country Report 2005, Govt of India

⁴ National Policy for Children 1974, Govt of India: ‘It shall be the policy of the State to provide adequate services to children both before and after birth and through the period of growth, to ensure their full physical, mental and social development.’

2. Child Marriages and Child Mothers:

Parents and families regularly marry off their daughters while they are still children. While the legal age of marriage for girls in India is 18 years, official data shows that the average age of marriage of girls continues lower, at 16.4 years. In five populous states, more than 62 per cent of girls marry while still minors. Millions of girls marry before they reach the 16.4-year average. In states (such as Rajasthan) where boys are also married as minors, neither sons and daughters have the choice of whom they marry, and when, as their elders decide for them.

Soon after marriage, the pressure to bear children begins. Girl children become reluctant mothers before their own childhood ends. Apart from the toll this takes of their health, it imposes a heavy psychological burden. With mounting social and in-law pressure to bear only sons, disturbing estimates are surfacing of abortions inflicted on these child-wives, to get rid of female foetuses. Maternal mortality data points to young girls falling prey not only to premature motherhood but also to repeated abortions. Pregnancy-related causes are on record as the leading cause of mortality for girls aged between 15 and 19 years.⁵

Due to persisting poor rates of civil registration of marriages and births, official calculations of the incidence of child marriage rest on Census counts data showing approximate age of a woman’s first childbearing. This, of course, may not always indicate the age of first pregnancy.

Is this situation acceptable as responsible parenting? How can CRC benefits and protections reach such children ?

2. Cheating children with disabilities of chances to achieve their potential:

India currently provides service coverage to only 5 per cent of its population with any form of disability, and reaches education and learning services to only 2 per cent of disabled children. Most of these scant services are in urban areas.

It is a strong felt need among families and parents to put children with disabilities in institutional care, in part because of their inability to provide adequate care for their other children. The ‘remedy’ is seen as custodial care, rather than special education from the family and home base. Community attitudes reflect a similar attitude.

The child with disability is consequently cheated -- by both family and the State -- of rightful opportunity to become achievers to the best of their ability.

We feel the issue of being without parental care therefore deserves a more open and inclusive analysis. We request the Committee to address the situations of children who are denied real parenting within the family structure, and to urge States-Parties to enhance their policies and programmes to defend their children’s best interests. Our Alliance invites dialogue on this examination of the issue.

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<sup>5</sup> Child Marriages & the Law in India: 2005, Human Rights Law Network (Socio-Legal Information Centre), India