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The child–State relationship revisited

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From The Margins Looking In: The child–State relationship revisited*

Vijayalakshmi Balakrishnan

Conversations on child rights resemble a see-saw, they remain balanced on two ideals: inclusion (ensuring children's rights are viewed as, universal human rights) and recognition (accepting that children are not mini-adults, they are individuals in their own right, only given life experiences need additional protections from all duty-bearers).

There is thus a remarkable uniformity to the dialogue on child rights, which allows for near unanimity in vision and approach. Unanimity has the benefit of allowing for policies to be framed with few conceptual challenges and programmes to move swiftly from drawing boards to budget line-items, thus underlining the urgency of the need to provide for children.

And yet despite all of the policy attention, material and human support, there is unanimous realization that the experienced reality of childhoods provides evidence that children are not and will continue not doing well.

Exploring in some depth, the specificity of the State–child relationship, suggests that the narrative of progressive changes in approach from welfare to development to rights, is intertwined with the lesser known narrative of the way the State has interpreted it and children have experienced its guardianship.

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The story of childhood and within it the relationship of the child with the State has been spun through the overlapping narratives of progress, mapping both continuity and change. In these narratives, time moves quickly, history highlighting the important milestones like Independence Day, Republic Day, Children's Day recalled and celebrated. Extending these moments, nationalist historiography links the Majority Act to the Bardoli and Karachi Resolutions of the Indian National Congress. Post-Independence, these distinct identities, of State and struggle, coalesce into the Constitution.

About the Public Conversation on Children

Public conversation on children, their rights and their childhoods[1] is remarkable for its balance, the lack of disagreement, the overlapping consensus.[2] Those who speak on behalf of children, in their best interest, now include a wide range of social actors such as advocates. Other than their family, those who speak on behalf of children consistently are the large and always growing group of non-profit organizations, a small, though influential, group of individual scholars and journalists and the State. Only the range of interests and standpoints are not reflected in the public sphere.

[1] In much political thought, the implications of specific conclusions, for understanding the adult–child interface in childhood has to be mined, interpreted from the writings for the philosophers, have with few exceptions, engaged with the experience of childhood. One of the first politically conscious engagements with childhood was by the historian Philip Aries. In his book *Centuries of Childhood,* Aries has controversially held that childhood as an experience is a creation of post-reformation European enlightenment. His thesis that there was a phase of crisis in the middle ages, when the State–religion relationship was being worked and reworked, when from infancy, the next stage, become adulthood, taking on the same and similar responsibilities of adults. Thus his thesis that with the growth of the State, so has grown the understanding and acceptance of childhood as distinct and different from adulthood, has led to development of ideas on how to move forward in understanding the relationship of children, with family, religion, State and market.

[2] The term was coined by John Rawls, to explain situations, where individuals, organizations, agree to disagree on certain fundamental principles and yet make a conscious choice to collaborate, ally and work together on select areas of common interest.

Scholars, development practitioners and activists, working in partnership with the State, on behalf of children, will assert that certainly more can be done. Alongside they will also assert that much has been done, comparing the present, with the colonial past.

Also speaking on behalf of children, while maintaining a distance from the State, is a large and growing field of independent activists, practitioners, and scholars. They portray a bleak reality–of promises broken. In juxtaposing the present with the past, they choose to hark back to the vision of social transformation that guided the nationalist struggle, re-imagining childhoods.

Among the first to demonstrate that there was a difference, but of degree, within the positions, of those who speak on behalf of children, was Dr. Myron Weiner in his seminal tract, 'The Child and the State in India'. Through the fate of the interconnected Constitutional promises of ending child labour and universalizing primary education, he demonstrated why children were not doing well in India. "Why has the State not taken legislative action when the Indian Constitution calls for a ban on child labour and for compulsory primary education, positions frequently reiterated in government reports as a long term objective?" He provides the answer also, "India's low per capita income and economic situation is less relevant as an explanation than the belief systems of the State bureaucracy, a set of beliefs that are widely shared by educators, social activists, trade unionists, academic researchers and more broadly by members of the Indian middle class." Dr. Weiner's text, while it has been influential in setting the norms of the public conversation on children and their rights, only revealed the existing reality.

He argues that the tone of the relationship of the child with the State reflected the elite belief system on the nature of State responsibility towards children which was limited and inadequate. Included in the definition of the elite are all those who speak on behalf of children forging thus an overlapping consensus on the nature and tone of the State's relationship with children. His rich and often insightful exploration has become the definitive view of the relationship of the State and the child. Consequently the nature of this relationship

and the pre-eminence of theState/elite belief system in molding it have remained largely uncontested.

Though Dr. Weiner does not directly make the connection, it is possible to retrace this overlapping consensus into the years of the nationalist struggle—less to the political movement for national independence and more to the goal of social transformation, then being advanced through M.K. Gandhi's constructive work programme.

Children, their rights and childhood as an experience were not a site of struggle during the nationalist movement between the colonial regime and the nationalists. Unlike other silenced communities, of religious and linguistic minorities, dalits, women, tribals, children and their rights had been viewed as sub-sects of other relationships that the State would forge anew. Principally, the relationships of the State with the family and also with the ethnic community, the understandings of group rights, were perceived to frame the relationship of the State with the child.

Even in the process of ideation for nation-building, there is no evidence that multiple visions of the childhood experience were ever presented, nor were there significant debates on the possible relationships of the child with the State, post-Independence. In the absence of an opposing view, it was accepted, that children had rights, claims on their parents, the extended family, ethnic community and the State, in that order of priority. Also acknowledged was that each group on whom the child had claims were duty-bearers.

As there were no dissenting voices, there was no conversation on how those claims should be articulated, who would have the right to speak on behalf of the child. Just as there was no debate on the nature of claims that could legitimately be made to any of the duty-bearers, from parent to State. Left ambiguous therefore was the chain of responsibility. What would happen if any of the duty-bearers faltered and were unable to fulfil a child's claim, then who would step in? During the years of struggle, there had never been any occasion or a felt need to engage with these questions.

Continuing the pre-independence conversation, during the Constituent Assembly debates, too, there is no evidence of alternative visions on the nature of State responsibility towards children. When legislators introduced and then discussed the provisions of what would become the Constitution of India, it was relatively easy to accept Dr. Ambedkar's contention and promise—both the right against exploitation as also the right to opportunity. So the Constitution, articulates the relationship of the State with the child, in Part IV, the non-justicible section, where the progressive ideas of what the vision of nation-building would mean for the most deprived are listed. These ideas, though clearly embedded in the vision of a welfare State, stop short of envisioning a universal national childhood. Certainly, in the text of the Constitution and in the debates, leading up to the making and acceptance of the document, there is no evidence that the needs are equated. And yet the overlapping consensus continues to define the frame of public conversation.

That the overlapping consensus has been crafted and carefully nurtured is evident as despite the widespread influence of Dr. Weiner's work, investigations on the relationship of the child with the State, continue to move from one fixed constitutional milestone to the next, the trajectory of the journey varying rather than milestones being passed and new ones being created.

There could be multiple views on how and why this overlapping consensus has continued to define the public conversation on children, their rights and their childhoods. There is likely to be a lesser debate on the architect of the overlapping consensus that was effectively unveiled in the Child and the State in India.

Jawaharlal Nehru's ideas on nation-building, on modernity, what would in time become known as the Nehruvian model of socio-economic development, have been the framework of the overlapping consensus. There is a rich irony to this, for Nehru himself was not known for his knowledge of or faith in the constructive programme, that Gandhi had. He, the designated successor of Gandhi's political programme would only meet Vinobha Bhave, the designated successor of the constructive programme, for the first time, about six weeks after

Gandhi's death. In the 25 years earlier, when Gandhi was the undisputed leader of both programmes, there had never been either an opportunity or even a felt need for the two individuals to meet. In his autobiography, Nehru articulates his frustrations at Gandhi's insistence on prioritizing the constructive programme, the focus on deepening the movement's base within the lives of people. In Nehru's view, the task of the struggle had to be singularly focused on political independence, after which all of the ideas that Gandhi was promoting would become the joint agenda of the State and of the people.

During the years of struggle, there had been broad agreement that independent India would be a welfare State. Nehru had visualised a structured planning process, to select from among the range of development priorities. There had not been any significant public debate on the nature of State responsibility towards children, or even of the rights of children; that in the proposed welfare State, children would have greater claim on national resources, than during the colonial period, was the only assertion. The overlapping consensus would be reflected in a relationship between the visionary leader, the State he would craft through a combination of institutions and norms and every child. It would be a relationship recalled, and sustained, that would resonate and take on a timeless dimension. Forgotten would be the circumstances, the context that necessitated the forging of a special relationship, between Nehru and the State he represented, as *chacha* for all children.

From the Recesses of Memory

There were three facets to the special relationship that was forged by the newly independent Indian State with the child. The first related to the continuity of the inheritance from the colonial State, the right to negotiate with society and market on behalf of the child. The second related to the inheritance from the national independence movement, the right of the State to redistribute resources and opportunities and to achieve a more equal society, the goal of the movement. Third was coping with the unexpected, to redress and compensate refugees, the acknowledged loser-survivors of partition, framed as the moral duty of the State.

The intertwining of remembrances of State, political and civil society and of the narratives of individual survivors also provides some understandings of the multiple definitions of justice that were used to make decisions and also choices from among difficult alternatives available. Examining each different aspect of the relationship provides insights into the making of the memory, history and identity of the experience of childhoods in India.

In the reality of the public conversation, there is no recognition of the experiences of some forgotten children, like all others, witness, participant and raconteur. Their lifeworld has become part of another history, on the other side of the border, blocked by the political decision to partition British India. Possibly, Partition divided more than the countries, it also divided memories. So their lifeworld finds no voice or even echo, in the stories of childhood experienced in post-independent India. That emotional connection, which had existed, had to be forgotten.

For Partition, alongwith being a political reality, was also an intensely personal experience. Redefined was the geographical space, but also reshaped were the minds of people. In the first few years, as the Constitution was being written, in everyday interactions, a relationship between the new State and the people was formed. The expectations were obviously much higher, as the relationship with the new State, was also seen as different. One of the early agreements that the people and the State came to appears to have been the decision to forget, and to move on. This was not State imposed, nor was it entirely a collective will. Partition, had been felt intensely, as it impacted the understanding of self, the violence destroying the idea of family in a way, unexpected.

In Parliament, the State had acknowledged the existence of unwanted children and accepted responsibility for those that were left entirely in their care. Having acknowledged that the mother had the principal right to make decisions about the child's future, the government was prepared to take responsibility for only those children, whose mothers, left for Pakistan, and left the children in the care of the State, and not the father. In reality, the State, found that there were three distinct categories of unwanted children, each of whom, forced the State, in its role as guardian, to make distinct and difficult choices.

The Orphan Child, With Claims to Multiple Communities

The idea of a child without family and community, was unfamiliar and threatening. In her diary, Begum Anees Kidwai records,

A Bengali sister took me[3] *to her room and reported there was another girl, three years old. "She has no one to call her own. She wanders about the hospital. She is a Muslim's daughter. Take her away with you." The girl was brought before me. When I asked her name she said—Sita Hasina. Then I asked her father's name. Again she gave me two names, one Hindu, another Muslim. She did the same with her mother's name. The Bengali woman said, 'Whatever she might say she is indeed a Muslim. She stretches both her hands wide and says—my father used to say, "May Allah grant happiness to everyone. She might be the daughter of a Muslim fakir."' But the nurse said she was a Hindu.*

I was in a difficult situation. I could think of just one solution—take her to Gandhiji. The paperwork over, I took her straight to Gandhiji. I said, "Bapu, this girl will cause riots among Hindus and Muslims. She calls herself by two names, she does the same for her parents too. Now tell me what to do with her." He smiled, turned to her and asked the child her name. She replied calmly, Hasina and Sita. Bapu said, "Keep her with you for the present. Later on send her to the school at Mehrauli run by the Kasturba Trust."

Quite evidently Gandhi saw no reason why the child could not belong to two religious communities if she so wished. Her desire would also be consistent with his own views on religiosity, which tended to be inclusive rather than exclusionary. Only the Gandhi, who accepted the child as Hasina-Sita, was no longer a community mobiliser, leading a nationalist struggle for independence. This was November 1947, Partition and Independence had become lived realities. Gandhi was now, mentor of the Indian State, able to influence decision-making at

[3] From the diary of Begum Anis Kidwai. *Azadi ki Chhaon Mein*.

every level. In his acceptance of Hasina-Sita, he provided State protection to the child's right to belong to two religious communities. In supporting the child's decision, to not make a choice of communities, he disregarded the views of the adults in the child's life. In extending protection to the child as Hasina-Sita, Gandhi, and the State he represented, took a position, which potentially could have led to a direct confrontation with family and religious community. A reality, Begum Kidwai was aware of. When she had brought Hasina-Sita to Gandhi, she had begun not by introducing the child, but by introducing the danger she potentially represented to society, "*Bapu, this girl will cause riots among Hindus and Muslims."*

The Children of Abducted Women: On the faultline between family, communities and states.

Unwanted children, those seeking from the newly independent State, all identity markers: of religion, nationality as also protection and material support stretched the imagination of the social workers and of the State. Initially the recovery project viewed children primarily in two clearly defined categories: Orphans and those with families. As the State struggled to cope initially with the exchange of populations the ministry of rehabilitation was prepared to engage with cases of children who could be compartmentalized within one or the other of these two categories. The solutions that were offered were linear and based on a perception of who was a child, the threshold between childhood and adulthood, between belonging and exclusion unstable.

"They (the three children of Rahat Ara) are very fine children and have been well looked after. I would be rather sorry to send them away. But, I suppose, there is no help for it.

Before we decide anything, I should like you to write to our Deputy High Commissioner, sending him a copy of this letter from Rahat Ara. Ask him to make discreet enquiries about these people, that is, Rahat Ara and her husband, especially about the husband. Tell him we want to have as much information as possible so as to enable us to decide.

We should look at this question from the human[4] *point of view. If both the father and mother want these children, I see no justification to keep them here. We may look after them well now, but how can we guarantee any future for them."*

In this case the State's position shifts depending on the identity with which it is engaging. While dealing with Rahat Ara,[5] as an abducted woman, her identity as the daughter of the family of Chaudhary Ghulam Abbas is prioritised. Her life in India as a citizen, wife and mother was seen as lower in priority, than the need to return to the family their honour, their daughter. The same State, when dealing with Rahat Ara as mother, shifts stands. In her identity as mother, when she asks for the return of the three children, the State accedes to her request and withdraws from guardianship of the children. The rights of the mother to continually make decisions about her children and the State's willingness to accede to her rights, was a particular understanding of guardianship that evolved during this period. The children of Rahat Ara had been rejected twice by their parents, and though re-acceptance into the family would mean loss of nationality for the children, it appears not to have affected the decision-making process. The Rahat Ara case, was not isolated. In its guardianship, the State regularly supported the rights of the parents over those of children.

[4] There is a fleeting reference in Mridula Sarabhai's papers, which suggest that soon after the children were returned to their parents, in Pakistan, Rahat Ara wanted to return with her whole family to India.

[5] Rahat Ara, the daughter of Chaudhury Ghulam Abbas, prime minister of Azad Kashmir, had been kidnapped by Jagdish Chander in 1947, when he was serving with the Indian Army in Jammu. She was found in Bombay in December 1954. Persuaded by her family, she left for Pakistan, leaving her three minor children with Jagdish Chander. The three children were later admitted to the Children's Home in Allahabad at the father's request. Later Jagdish Chander crossed the border into Pakistan, converted to Islam and was reunited with his wife, Rahat Ara. She and Jagdish Chander (now Khalid Mahmood) then wrote to Nehru requesting that their children be restored to them in Lahore.

The Nehruvian Imprint

All the existing research on children and their rights begins from the standpoint of the Constitution. There is a trajectory which moves from the colonial to the post-independent times, in law and policy. This has allowed for progress to be measured against nationalist aspirations as also contrasted with the colonial past. In all of these analysis the particularity of the Indian experience has been inadequately studied. Primarily, because the focus on the authority of the Constitutional text has meant inadequate attention has been given to the context in which the Constitution was framed.

An indication, that for children and their relationship with the new State, the transition meant a change became obvious with the head of the new government getting a new title. Nehru, Panditji through the years of struggle, had in the transition period acquired a new title, denoting a new relationship —*Chacha* to all of India's children. What happened in the years of transition that required the forging of the new relationship, the donning of the mantle of *chacha*, with all of its familial, kinship and societal linkages and implications is possible to understand only by shifting the centre of gravity from the text, to the context.

Looking back, Nehru would view his father and Gandhi as the two most formative influences on his life, and certainly, his political consciousness was moulded initially through a rejection of his father's moderate views, and later through the acceptance of Gandhi as Bapu. The influence of either or both would certainly explain his evolution, as a mass leader, Panditji, part of the crowd and yet apart. Neither influence explains his evolution as *chacha*, a member of the family, with a special relationship with children.

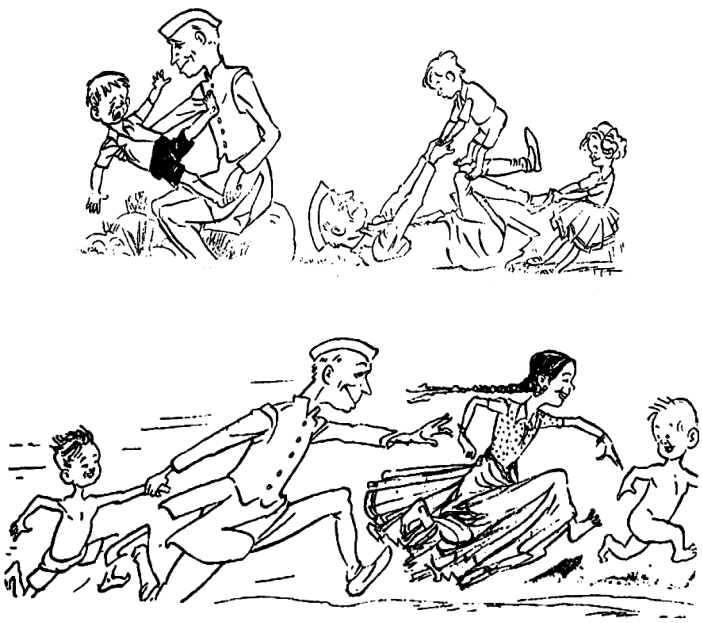
It was curious that Nehru was given this appellation, which had limited resonance in his private life. With two sisters and no male siblings, *mamu*, mother's brother would have been unremarkable, denoting a seamless continuity of relationships from the private to the public sphere. It would however have raised other concerns. In Hindu

The Nehruvian Vision of the Role of the Child in Childhood

mythology, there have been multiple instances of the *mama*[6] taking on roles and responsibilities that interfere and disturb the traditional family and social structure. That there was a departure, a shift in understandings, also suggests, that the relationship, was not just with Nehru, the man, but more specifically of the State that he led.

The identity of *chacha* embeds the relationship of not just the State with the child, but also of the State with the family as a collective and with the parents. There is with this a clear acknowledgement of an asymmetrical power relationship. For one it locates the State within

[6] Sudhir Kakar, in his thoughtful *Inner World: A Psychoanalytic Study of Childhood and Society in India*, has analysed parts of the *Mahabharata*, an epic tale to surface indigenous Indian constructions of childhood. Sources of this understanding of the role of the *mama* can be found in the stories of two of the characters within the epic, Shakuni and Kansa, *mama* to the Kauravas and Krishna respectively.



Nehru's Vision of the Role of the Adult in Childhood

a framework of patriarchy, aligning clearly with the male and thus reposing faith in a particular cultural understanding of the family. As *chacha* the State takes on a distinctly masculine identity, a protector, with a responsibility. Only in so doing, the State also accepts a subordinate position to parents in defining and actualizing children's rights within the family and in the wider world.

As culturally accepted, the Indian State thus accepted that his relationship with children would come into play only in times of emergencies or family crisis, as a supplement to the parents. Within the framework of the relationship as defined by society there would be a hesitancy to engage with and influence the child's immediate environment. In assuming the identity of *chacha*, Nehru and the State he represented forged a political relationship with children. The relationship of State with the child would be hyphenated, mediated through family.

The Nehruvian imprint on State policy was best articulated in the National Policy for Children, 1974. The idea of the child as a national

asset, an investment priority for the modern nation-state, was clearly laid down, marking a visible departure from the pre-independence thinking of the child as a dependent, an object of State action:

- *"The child being always dependent, has to be provided for".*
  – First 5-year plan document, 1951

- *The nation's children are a supremely important asset...prominent part of our plan for development of human resources...so that our children grow up to become robust citizens"*
  – National Policy for Children, 1974

Along with marking a departure from the colonial past, the policy statement also marked a departure from the Gandhian understanding of the child as a complete individual, capable of making decisions. Decisively, the policy states that children are to be developed to become citizens, the decision-makers of tomorrow.

Nehru's Vision of the Role of the Child in Adulthood

The Hyphenated Child–State Relationship

The Indian State has a relationship with the child, which is distant and yet familial. In the course of the early post-Partition days, a relationship was forged between the new State and the children of India. The relationship, which would take many months to name, would be mediated through the institution of the family and as such would gain unprecedented social legitimacy. Embedded, within the social ethos of the family, the Indian State's relationship with the child would uniquely allow a greater degree of intervention within family and community affairs than would be available to governments in many other developing countries. Moreover, the framing of the social relationship within the indigenous idiom provided children the right to claim State attention, even independent of their family. This social relationship is acknowledged by all those who have been willing to speak on behalf of children from the time when the relationship was forged and through the generations since.

Consequently, in India, the strict separation between the public space (the domain of community and political activity) and private space (the domain of family), in making decisions about children's well-being, the hallmark of many other national experiences, has been less in evidence. The relationship between State, society and family, when it comes to improving the experience of childhood in children's lives, has been uneasy at times, but rarely confrontational.

Moving Towards A Relationship-Based Approach

Relationships have certain characteristics which are of great value given the antecedents of the State–child relationship in India. Along with continuity, the most important factor is the trust, which the State gains from the child as also those who speak on his/her behalf.

Acknowledging the primacy of relationships in influencing the course of children's lives and their experience of childhoods has immediate policy implications. A relationships-based approach will require an expansion in focus. Not only those policies and laws that are designed for children will need to be reviewed to understand their impact on the

lives of children but also those that impact the adults in their lives. Evidence will emerge that there are a range of laws and policies that impact the present and future of children—yet these remain uninformed by child rights activists. It is known that land consolidation for mega infrastructure projects displaces not just farmers, it also denies children education; policy changes that dilute adult worker benefits force children to work as also attend school; anti-terrorism laws that are misused in the field all have an impact on children's lives today and, importantly, their ability to access opportunities for a better tomorrow. Realisation will dawn that the experienced reality of childhood provides evidence that children are not and will continue to not do well.

For the State, which had in the Constitution already arrogated the role of guardian, the Nehruvian legacy gave a legitimate role to speak on behalf of children, in safeguarding the childhood experience, including in family affairs, while also setting limits on the range of issues it could intervene about. In the Constitutional role of guardian, there are no limitations on the scale or the nature of interventions that the State can make for children.

Only the choice is largely for the State to make. In case, actualizing of the rights of children central to political decision-making is viewed as important, it requires a relationships-based approach. Otherwise, for the foreseeable future, we will only see a continuation of the status quo.

It has been very convenient to remember the relationship of the State with the child, through the honorific of *chacha*, claiming thus a space that is individual and social. In these terms, framing the relationship of the individual and the social also has another purpose. It ensures that the analysis overlooks the political dimensions of the relationship. In so doing, it limits the conversation of the changing textures of the child–State relationship.

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