

INDIA'S CHILDREN

Continue to Challenge
our Conscience



© HAQ: Centre for Child Rights 2019

ISBN No.978-93-83807-12-3

Suggested Citation: Ganguly, Enakshi (ed). 2019. India's Children-Continue to Challenge Our Conscience. HAQ: Centre for Child Rights. New Delhi. India

Research: Bharti Ali, Mukund Madhav

Published by HAQ: Centre for Child Rights
B 1/2, Malviya Nagar, New Delhi
+91-11-26677412
+91-11-26674688 (Fax)

Website: www.haqcrc.org

Facebook: <https://www.facebook.com/HaqCentreForChildRights/>

Twitter: @HAQCRC

Linkedin: [haq-centre-for-child-rights](https://www.linkedin.com/company/haq-centre-for-child-rights)

Part Supported by: Terre des hommes (TDH) (G) India Programme

Proof Reading: Vijayalakshmi Balakrishnan, Preeti Singh

Cover Image: Anne_Roberts/Flickr

Design & Printing: Aspire Design

For print copies kindly contact publisher. Report can be downloaded from www.haqcrc.org

INDIA'S CHILDREN



Continue to Challenge
our Conscience

Edited by
Enakshi Ganguly



"The greatest lessons in life, if we would but stoop and humble ourselves, we would learn not from the grown-up learned men, but from the so-called ignorant children."

Mahatma Gandhi

Acknowledgement

In 2002, HAQ: Centre for Child Rights published its first Status Report on India's Children titled "Children in Globalising India: Challenging Our Conscience". This report, which is also the fifth in the series, reflects on how children and the realisation of their rights continue to challenge our conscience even today.

The first status report was an edited volume and so is this one. It comes after a gap of about eight years as updated information and data on child rights indicators is one of those challenges that digital India needs to overcome at the same pace as launching of remote sensing satellites. Sadly, the last household survey data available at scale is Census 2011. NFHS-4 was published in 2015-16 and the last set of crime statistics available is also dated 2017. Although the data challenge remains, an effort has been made by the authors as well as HAQ to scan through a range of different sources of information.

The other challenge that this report highlights is with respect to a plethora of laws and policies that get framed and reframed in the name of promoting, protecting and realising children's rights, while ignoring even the little evidence that is available, particularly on the implementation gaps.

The third most critical challenge in a country where children constitute 37 per cent of the population is the absence of engagement with children who are directly and indirectly affected by the policy changes, and more so when plans and strategies change too frequently, the education sector being a stark example of this. With support from Terre des Hommes (Germany), the publication has been simplified by Ms. Mini Shrinivasan for children's understanding and use. We sincerely appreciate Mini for agreeing to do this at a very short notice and with limited time in hand.

Around 60 children from across the country will be discussing the child-friendly version at a children's convention and will share their experiences, thoughts and voices at a public hearing on 20th of November 2019 that marks the 30 Years of UN CRC.

We approached a number of agencies, seeking support for this report. Terre des Hommes (Germany) is the only agency that agreed to part support the publication and release. We thank them for vesting their trust in us.

We thank all the authors who contributed to this report. They have at different points been requested, cajoled and even pushed. We recognise that each one of them is super busy, but they agreed to be part of this mammoth project pro bono. For that we are deeply grateful. We need to especially acknowledge Meenakshi Ganguly who as always gets pulled in for her inputs and support.

We also thank Aspire Design, our most trusted design and printing partners to have given the publication its present shape.

We thank the children who inspire us to keep pushing for change in a world that often seems so unchanging...because change is so slow to come by. For the last 20 years children have reminded us never to give up, because they do not.

Enakshi Ganguly

Bharti Ali

Contents

About the Authors

Abbreviations

1. India's Children: Continue to Challenge Our Conscience 10
Enakshi Ganguly

PART 1

2. Role of the State in Advancing Child Rights – Overcoming Ambivalence 38
Karuna Bishnoi
3. Child Health 58
Abhijit Das
4. Child Protection in India 80
Nicole Rangel Menezes
5. Education as A Right 102
Subir Shukla
6. Children's Participation – A Practitioner's Perspective 120
Rita Panicker
7. Ecological Rights of Children 134
George Chira
8. Public Financing and Child Rights 146
Biswajit Dhar

PART 2

9. Visibilising The Young Child in India as A Rights' Holder 160
Samreen Mushtaq, Amrita Jain and Sumitra Mishra
10. Children with Disabilities – An Excluded Agenda 170
Anita Ghai
11. Sexual Abuse of Children and the Child Protection Challenge 186
Bharti Ali
12. Children in Conflict with the Law 210
Shruthi Ramakrishnan and Swagata Raha
13. Child Marriage – Ongoing yet Changing 224
Enakshi Ganguly and Indira Pancholi
14. Children Growing up in the Shadow of Conflict 238
15. Rethinking Child Labour 248
Prabir Basu
16. Do Children's Issues Make News? 268
Biraj Swain

About The Authors



ABHIJIT DAS

is a doctor with training in obstetrics, paediatrics and public health. He is currently Managing Trustee, Centre for Health and Social Justice, in New Delhi and Clinical Associate Director, University of Washington, Seattle, USA. He has over thirty years' experience in working directly with communities as well as improving systems through training, research and policy advocacy at the national and global level. Abhijit is a pioneer on involving men for gender equality programming. He has authored many papers and articles in academic and popular publications and has been an invited speaker on many national and international platforms.



AMRITA JAIN

is Chairperson, Mobile Creches, while being a member on the Governing Board, she has worked closely with Mobile Creches programme since 1991. She has developed training modules, curriculum and has been actively involved with advocacy from grass roots to policy for the young child.



ANITA GHAI

is an academic and an activist working in areas of disability sexuality, psychology, gender, education and health rights. She is professor in School of Human Studies, Ambedkar University Delhi since 2015. Before this, she was an Associate Professor in Department of Psychology in Jesus and Mary College, University of Delhi. As a former fellow at the Nehru Memorial Museum Library, Teen Murti Bhavan, she has researched on issues of care of disabled women. She has been President of the Indian Association for Women's Studies. Her contribution to the field of disability studies is considered seminal. She has published extensively on feminism and disability rights.



BHARTI ALI

is a development professional and a social activist working on issues concerning the rights of women and children for over 28 years. She is one of the Co-founders and currently the Executive Director of HAQ: Centre for Child Rights. She has conducted and led several researches, training and capacity building programmes for different stakeholders, public advocacy and campaigns on child rights and child protection concerns in particular. Some of her research is published in the form of books, articles and reports.



BIRAJ SWAIN

works on the intersection of poverty, public policy and citizen-state engagement in South Asia, HECA (Horn East and Central Africa) and globally. She is a Senior International Development Expert, an educator, writer, media-watcher and podcaster. She has also been an ICFJ Washington DC fellow on Early Child Development. She is creator and curator of several journals and programmes such as a multi-media #ChildhoodMatters and Global Summits: Where are we going? for NewsLaundry; IDS journal- Standing on the threshold: Food Justice in India; Of Nourishing India's Tribal Children. She is a regular media critic and commentator.



BISWAJIT DHAR

is Professor, Centre for Economic Studies and Planning in the Jawaharlal Nehru University, New Delhi. Prior to joining the University, Dr Dhar was the Director General of Research and Information System for Developing Countries, a think-tank under the Ministry of External Affairs, Government of India, which specialises on international economic issues.



ENAKSHI GANGULY

is the Co-founder of HAQ: Centre for Child Rights and was its Co-Director till August 2018. She has been engaged in research, advocacy and training on wide-ranging socio-legal issues and human rights particularly of children, women and other marginalised groups for three and a half decades. She is currently Advisor to HAQ.



INDIRA PANCHOLI

has been involved in a range of women's rights issues through her work with Information Development and Resource Agency (IDARA), Mahila Samuh, Ajmer, Agaz Foundation and Azad Foundation. She is also well known for her work on the rights of displaced persons and was, with her partner, Ravi Hemadri, instrumental in the formation of Bisalpur Samanvay Samiti – an organisation of the people displaced from Bisalpur dam in central Rajasthan. Her work among women of this region led to the formation of Mahila Jan Adhikar Samiti (MJAS) in 1995. Although it began by combating violence against women and women's empowerment through leadership development as central issues, today it also works with children and adolescents. She is currently heading the child marriage prevention project of HAQ: Centre for Child Rights. She continues her association with MJAS and Bisalpur Samanvay Samiti and is an active member of autonomous women's movement in the country. She has undertaken a number of research studies and published in English and Hindi.



KARUNA BISHNOI

is a child rights advocate and independent consultant with over four decades of work experience in social development with a specific focus on child rights since 2000. She has served in several national/international committees and working groups on children's rights and worked on policy analysis and programme reviews to contribute to organisational learning and guide strategic planning and advocacy and undertaken, research, analytic documentation and report writing for knowledge development. She has worked in UNICEF India for 27 years.



NICOLE RANGEL MENEZES

has worked in the field of child rights and child protection for more than 20 years. A part of the early team of CHILDLINE India Foundation (CIF), Nicole was part of the team which achieved the incorporation of CHILDLINE1098 emergency helpline into the child protection system of the Government of India. In 2013, Nicole co-founded Leher, a child rights organisation, which works on promoting a preventive thrust to child protection—at the primary level, through collaboration between communities and governments, and for every child.



PRABIR BASU

is a founder member and Director of SPAN – Society for People's Awareness since 1989. SPAN is a not for profit organisation based in Kolkata, West Bengal, working to protect the rights of women and children, particularly from the marginalised and excluded sections of society. Since co-founding SPAN, he has been a strong child rights advocate at the state and national level. He has been the Convenor of the Campaign against Child Labour (CACL) at state and national level and the Right to Education Representative for the state of West Bengal to support and assist NCPCR in monitoring and realising the implementation of right to education in the state. SPAN is also undertaking child budgeting in West Bengal.



RITA PANICKER

is the founder and Director of Butterflies, a non-governmental organisation in New Delhi, working to protect and empower street connected and vulnerable children since 1989. She was a faculty member in the Women's Studies Unit, at Tata Institute of Social Sciences, Mumbai between 1988-1992. She has published several papers on child rights issues and co-authored a study on children in conflict with law.



SAMREEN MUSHTAQ

is a researcher with interests in Gender, Exclusion, and Human Rights. Her writings have appeared in Economic and Political Weekly, Jacobin, Al Jazeera, Caravan, Indian Express, among others. She has previously been associated as a Research Consultant with The Hindu Centre for Politics and Public Policy. She is currently engaged as a Researcher with Mobile Creches, working on a report "State of the Young Child in India".



SHRUTHI RAMAKRISHNAN

is an independent legal consultant in Bangalore working primarily in the area of child rights, other areas of human rights law and gender equality. Shruthi has been a Research Associate in the Centre for Law and Policy Research (Bangalore) where she worked on Constitutional Law, Disability Rights and Right to Education. Subsequently, a Research Consultant at the Centre for Child and the Law (CCL), National Law School of India University, Bangalore.



SUBIR SHUKLA

works on improving the quality of education system, beginning in 1986 when he lived in a tribal village for 6 years while working on primary education with Eklavya, Madhya Pradesh. He has worked extensively with government systems, as Chief Consultant (DPEP, 1995-98) and Educational Quality Advisor (SSA) to MHRD, and led the development of the Quality Framework for the RTE. He has consulted for most state governments in India and several national governments in Asia and Africa. He is a part of Team Ignus that works on curriculum, textbooks, teacher training and quality improvement processes in various states, especially on large scale, and has established a low-cost educational publishing house, Manan Books.



SUMITRA MISHRA

is Executive Director, Mobile Creches, is leading the organisation, ensuring the voice of most vulnerable young children is central to the policy agenda of governments, businesses and civil society where their areas of work overlaps with rights of children. She has over twenty years of work experience with the most excluded and disenfranchised – persons with disabilities, victims of trafficking, survivors of violence, especially women and children.



SWAGATA RAHA

is a legal researcher with over 14 years of experience. She has researched and published extensively on laws related to sexual offences against children, juvenile justice, and human rights institutions. She has designed and conducted training programmes on juvenile justice and the POCSO Act and was part of a team at the Centre for Child and the Law, NLSIU Bangalore that provided technical support to the Supreme Court Committee on Juvenile Justice from 2014-2018. She currently consults with Enfold Proactive Health Trust.



CHIRAPPURATHU JOHN GEORGE (C J GEORGE)

has engaged in social commitments from his student days, supporting workers in the unorganized sector and their families. With an MA in Philosophy and LLB from Pune University, he started working in the development sector in the late 70s. He was initially employed with Training for Development Scholarship Society, Pune and later by terre des hommes Germany as its South Asia Coordinator. He expanded the work of terre des hommes Germany across India and into Nepal and Pakistan. He continues to be engaged with different organisations as a Development Consultant.

List of Abbreviations/Acronyms

AHS	Annual Health Survey
AHTU	Anti Human Trafficking Unit
AIIMS	All India Institute of Medical Sciences
ANC	Antenatal Care
ANM	Auxiliary Nurse Midwife
ARACY	Australia's Research Alliance for Children and Youth
ARSH	Adolescent Reproductive and Sexual Health
ASER	Annual Status of Education Report
ASHA	Accredited Social Health Activist
AWC	Aaganwadi Centre
AWW	Aaganwadi Worker
BBA	Bachpan Bachao Andolan
BfC	Budget for Children
BJP	Bhartiya Janata Party
BMC	Biomed Central
BMGF	Bill and Melinda Gates Foundation
BMI	Body Mass Index
BRICS	Brazil, Russia, India, China and South Africa
BSS	Behavior Study Survey
CACL	Campaign Against Child Labour
CBI	Central Bureau of Investigation
CCE	Continuous, Comprehensive Evaluation
CCI	Child Care Institution
CICL	Child in Conflict with Law
CIE	Central Institute of Education
CINI	Child in Need Institute
CLAA	Criminal Law (Amendment) Act, 2013
CLTF	Child Labour Task Forces
CMIE	Centre for Monitoring Indian Economy
CMPA	Child Marriage Prohibition and Regulation Act, 2006
CNCP	Child in Need of Care and Protection
CPC	Child Protection Committee
CPCRA	Commissions for Protection of Child Rights Act
CRC	Convention on the Rights of Child
CSD	Conference on Sustainable Development
CSO	Civil Society Organisation
CSR	Corporate Social Responsibility
CWC	Child Welfare Committee
CWD	Child With Disability
CWSN	Children With Special Needs
DCPCR	Delhi Commission for the Protection of Child Rights
DPCU	District Child Protection Unit
DCRC	Delhi Child Rights Club

DEIS	District Early Intervention Centre
DEPwD	Department of Empowerment of Persons with Disabilities
DIETs	District institute of Education and Training
DLSA	District Legal Service Authority
DPEP	District Primary Education Programme
DRM	Disaster Risk Management
DWCD	Department of Women and Child Development
ECCE	Early Childhood Care and Education
ECD	Early Childhood Development (ECD)
Ed	Executive Director
EFA	Education for All
EPI	Expanded Programme on Immunisation
FP	Family planning
FRBM	Fiscal Responsibility and Budget Management
GAVI	Global Alliance for Vaccines and Immunization
GDP	Gross Domestic Product
GER	Gross Enrollment Ratio
GNP	Gross National Product
GOI	Government of India
GRAP	Graded Response Action Plan
HIV/AIDS	Human Immunodeficiency Virus/ Acquired Immunodeficiency Syndrome
HNI	High Networth Individuals
HPV	Human Papilloma Virus
HR Bodies	Human Rights Bodies
HRLN	Human Rights Law Network
ICDS	Integrated Child Development Services
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICP	Individual Care Plan
ICPS	Integrated Child Protection Scheme
ICRW	International Centre for Research on Women
ICT	Information and Communications Technology
IEDC	Integrated Education of Disabled Children
ILO	International Labour Organization
IMR	Infant Mortality Rate
INGO	International Non-Governmental Organisation
IPC	Indian Penal Code
ITI	Industrial Training Institute
IVRS	Interactive Voice Response System
JJ	Juvenile Justice
JJA 2000	Juvenile Justice (Care and Protection of Children) Act, 2000
JJB	Juvenile Justice Board
LBSNAA	Lal Bahadur Shastri Academy of Administration
LWE	Left Wing Extremism
MACR	Minimum Age of Criminal Responsibility
MCH	Maternal and Child Health Programme
MDC	Mentally Deficient Children

MDG	Millennium Development Goal
MDM	Mid-Day Meal
MHRD	Ministry of Human Resource Development
MIYCF	Maternal, Infant and Young Child Feeding
MLE	Multi-Lingual Education
MoHFW	Ministry of Health and Family Welfare
MSJE	Ministry of Social Justice and Empowerment
MWCD	Ministry of Women and Child Development
NAS	National Achievement Survey
NCAG	National Coordination and Action Group
NCDs	Non Communicable Diseases
NCF	National Curriculum Framework
NCLP	National Child Labour Project
NCPCR	National Commission for Protection of Child Rights
NCRB	National Crime Records Bureau
NCT	National Capital Territory
NCTE	National Council for Teacher Education
NCW	National Commission for Women
NDA	National Democratic Alliance
NDTV	New Delhi Television Limited
NFHS	National Family Health Survey
NFS	National Food Security
NGO	Non-Government Organisation
NHM	National Health Mission
NIMHANS	National Institute of Mental Health and Neurosciences
NIN	National Institute of Nutrition
NITI	National Institution for Transforming India
NPAC	National Plan of Action for Children 2016
NPC	National Policy for Children
NRC	National Registration Certificate
NREGA	National Rural Employment Guarantee Act
NSDC	National Skill Development Corporation
NSSO	National Sample Survey Office
NTD	Neural Tube Defects
OBC	Other Backward Communities
OHCHR	Office of the United Nations High Commissioner for Human Rights
OPAC	Optional Protocol on the Involvement of Children in Armed Conflict
OPSC	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
ORT	Oral Rehydration Therapy
PCMA	Prohibition of Child Marriage Act
PCPNDT Act	Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994
PENCIL	Platform for Effective Enforcement for No Child Labour
PF4C	Public Finance for Children
PIB	Press Information Bureau
PIL	Public Interest Litigation

POCSO	Protection of Children from Sexual Offences Act, 2012
PRI	Panchayati Raj Institutions
PTR	Pupil Teacher Ratio
PUBG	Player Unknown's Battle Ground
PWD	Persons with Disabilities Act (Equal Opportunities, Protection of Rights and Full Participation), 1995
RGI	Revenue Generation Index
RKSK	Rashtriya Kishor Swashtya Karyaram
RMNCH+A	Reproductive Maternal Neonatal Child Health plus Adolescent
RMSA	Rashtriya Madhyamik Shiksha Abhiyan,
RSF	Reporters Without Borders
RTE	Right of Children to Free and Compulsory Education Act 2009
RWA	Residents Welfare Associations
SAARC	South Asian Association for Regional Cooperation
SAIEVAC	South Asia Initiative to End Violence Against Children
SBM-G	Swach Bharat Mission –Gramin
SC	Scheduled Caste
SCERT	State Council of Educational Research and Training
SCPCR	State Commissions for the Protection of Child Rights
SDG	Sustainable Development Goals
SHUT	Services for Healthy Use of Technology
SJPU	Special Juvenile Police Unit
SLL	Special and Local Laws
SMC	School Management Committee
SOP	Standard Operating Procedure
SPO	Special Police Officers
SRS	Sample Registration System
SSA	Sarva Shiksha Abhiyaan
ST	Scheduled Tribe
TISS	Tata Institute of Social Sciences
TLM	Teaching Learning Material
U5MR	Under-five Mortality Rate
UIP	Universal Immunisation Programme
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNCRPD	United Nations Convention on the Rights of Person with Disabilities
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations International Children's Emergency Fund
UPA	United Progressive Alliance
USD	United States Dollar
UTs	Union Territories
VHND	Village Health and Nutrition Day
VLCPC	Village Level Child Protection Committee
WCD	Women and Child Development
WHO	World Health Organization

1

INDIA'S CHILDREN

Continue to Challenge
Our Conscience

ENAKSHI GANGULY



In 2002, soon after HAQ: Centre for Child Rights was founded (1999), we had published the first status report, *Children in Globalising India: Challenging Our Conscience*.¹ Over one and a half decades later, as we examine their status again we find there have been many steps taken to address the issues confronting children of India. Yet their situation continues to pose challenges to our collective consciousness. While there are some old festering issues and problems, many of which still continue to find justification in culture, norms and religion; others are new.

Those who were born in 2003 are 16 years old – and if lucky in secondary school. Those not so lucky, would have dropped out to work or even be married or perhaps even be languishing in institutions categorised as ‘CNCP’ or ‘CICL’ (Child in Need of Care and Protection or Child in conflict with the Law). They have already lost out on their childhood. Those who were children then, like my own, are adults. How were they prepared for their adulthood today? Some may have children of their own now. Many of them had taken on adult responsibilities early in their life, many faced violence and exploitation. Others like mine, were privileged to have been able to complete their education and get into professions. As adults, we are sure, they too find their conscience challenged by what they see around them today.

This decade and a half has witnessed some encouraging moves made by Government, as also by society. There is greater awareness about rights of children. Silence around abuse, especially sexual abuse, is being broken. More and more people are seeking accountability from government. But there is a flip side to it that's not very encouraging.



Child budgeting is now an accepted concept with governments – both national and some state governments are implementing it. More organisations, national and international are undertaking child budgeting. But the share of children in the national budget has shown a fall. Not all states have formulated child budget statements. And most important of all, there remains a gap between the budget estimate, actual expenditure and how they translate into outcomes for children. Biswajit Dhar, traces the evolution of child budgeting, and locates HAQ's contribution.

Elementary education is now a fundamental right, but children still feel compelled to drop out of school – rather find themselves 'ejected' out. 14 years in elementary school means children find it hard to continue up to secondary levels or beyond – thereby lack even the most basic qualification for many technical jobs.

Right to health still remains an aspiration, while access to health has become harder in the wake of growing privatisation of health and increase in costs of medicines.

Skewed sex ratio, violence and crime against children, child trafficking, child labour, child marriage – all of which were subjects of chapters in 2002, continue to be serious concerns in 2019. Girls still jostle and struggle against discrimination, as do dalit, tribal and minority children. What is new is the newer kinds of violence in the wake of the social media revolution, that was still 'birthing' then. Online abuse and cyber bullying has become a reality to reckon with.

While in 2002, there was very little attention to child protection. Today it is an area of 'specialisation'. There are many more legal protections available to children. In fact, 2011-2019 has seen a spurt in drafting and enactments of laws, policies, plans, protocols and SOPs (Standard Operating Procedures)– including some that have been contentious and contested.

Despite the general increase in consciousness about crimes against children and need for justice that is welcome, the environment is much less forgiving and more blood-thirsty. Although silence has been broken and reporting increased, stigmatisation of victims continues. They are forced to drop out of schools or change schools, and shift homes.

That a child is a person upto the age of 18 years is now almost an uncontested fact. Most laws and policies follow this definition, making exceptions or specific provisions within this.

'Tough laws' have been the response to demands from an emotionally charged public left hopeless by the lack of implementation of public services for child protection, law and order, and justice. It was actually an outpouring of rage against all those that 'get away' because of tardy implementation of laws. "Hang the rapist- otherwise he will continue to plague society", was the populist demand. No focus on guarantee of prosecution and rightful conviction. "Change the juvenile justice law because children in those 'awful institutions' never get reformed". No focus on better implementation of the law which may change the situation. "Children mature faster these days- so adult time for adult crime". No focus on making distinction between information and knowledge and the need to help children process information. "Children of the poor need to work". No focus on the structural reasons that force the poor children to drop out of schools and get into work.

Children are not a homogenous category. They are defined by their age, ethnicity, religion, gender, (dis)ability or geographical location, as are their needs. The best way to determine what is right for them is by making them part of the conversation and listening to them. It is now fairly well-established that any intervention for children also needs to recognise age-appropriateness and their evolving capacity along with what would be in their best interest.

Skewed sex ratio, violence and crime against children, child trafficking, child labour, child marriage- continue to be serious concerns. What is new is the newer kinds of violence in the wake of the social media revolution, that was still 'birthing' then.

TABLE 1: DEFINITION OF CHILD

S.No	LAW/ POLICY/LEGAL PROVISION	AGE
NATIONAL		
1	Indian Majority Act	18 years
2	Juvenile Justice (Care and Protection) of Children Act (child)	Up to 18 years Includes provision for children in the 16-18 to be treated differently
3	Prohibition of Child Marriage Act (child/ minor)	18 for girls and 21 for boys
4	Right to Free and Compulsory Education Act (child)	Upto 14 years
5	The Child and Adolescent Labour (Prohibition and Regulation) Act 1986 (child)	Addresses persons up to the age of 18 years Creates 2 categories within that 14 years (Prohibition) 18 years (regulation)
6	Protection of Children from Sexual Offences Act (child)	Up to 18 years for all children
7	IPC- Criminal Law Amendment	Marital Rape not an offence if the wife is 15 years and above
ADOLESCENTS		
1	The Child and Adolescent Labour (Prohibition and Regulation) Act 1986 (only law with a legal definition of adolescents)	15-18 years (regulation of labour)
2	Under ICDS Programme (adolescent girls)	11-18 years
3	RCH programme (adolescents)	10-19 years
4	Youth Policy (adolescents)	13-19 years
INTERNATIONAL		
1	UN Convention on the Rights of the Child (child)	Upto 18 years
2	Adolescents (World Health Organisation and others)	10-19 years

The 'Eco-System' in Which Children Live

No status of children analysis can be undertaken without the context or the ecosystem in which they exist - social and political, ecological, environmental or cultural, not to mention the market. India is the second fastest growing economy in the world.² India's richest 1 per cent holds 58 per cent of the country's total wealth, higher than the global figure of about 50 per cent. According to the latest survey, the wealth of this elite group increased by over ₹ 20.9 lakh crore – an amount close to the total expenditure estimated in the Union Budget 2017. At the same time the income inequality gap in India is widening further.³ Which means there are children who are growing up in households that are being pushed into this unequal situation.

While India's top 1 per cent of the population now holds 73 per cent of the wealth, 67 crore citizens, comprising the country's poorest half, saw their wealth rise by just 1 per cent.

Source: <https://www.businesstoday.in/current/economy-politics/oxfam-india-wealth-report-income-inequality-rich-ests-poor/story/268541.html>

Government of India says, "India has high population pressure on land and other resources to meet its food and development needs. The natural resource base of land, water and bio-diversity is under severe pressure. Food demand challenges ahead are formidable considering the non-availability of favourable factors of past growth, fast declining factor productivity in major cropping systems and rapidly shrinking resource base."⁴ A survey of 5,000 farm households across 18 states says that 76 per cent farmers would prefer to do some work other than farming.⁵

HAQ has always maintained that children are impacted greatly by what ostensibly doesn't seem a 'child rights issue'. That is why children and mining was an area it worked on for several years and continues to take an interest in.⁶ The impact of agricultural policies or infrastructure policy all affect children. Indeed, even banking policies affect children as families suffer. The impact on children in terms of what the families can spend on them is bound to affect their lives. These are areas that need to be studied closely in the future with a child rights lens.

Children are on the move within the country, across the region and also beyond. These are children who are on their own or with their families. This too has its own consequences, especially in a world in which ethnic and religious tensions are on the rise and forced evictions and displacement remains a constant. The Housing and Land Rights Network (HLRN) calls forced evictions and displacement an unabating national crisis. In their report, *Forced Evictions in India in 2018*, HLRN and its partner organisations, revealed that government authorities, at both the central and state levels, demolished more than 41,700 homes, thereby forcefully evicting over 2 lakh people across urban and rural India. "This is in addition to the over 260,000 people evicted in 2017, the majority of whom were not resettled by the State and thus continue to live in extremely inadequate conditions characterised by high insecurity, lack of access to basic services, precarity, and fear". HLRN estimated that least 11.3 million (1.13 crores) people across India live under the threat of eviction and potential displacement.⁷ When entire families are in shock and trauma, how can children be spared? The report documents the increased vulnerability of children to abuse and that they had to drop out of school. For example, when families were evicted for the restoration of Korattur Lake in Chennai, traumatised by the shock of the eviction, a woman attempted self-immolation with her two young children, but was rescued in time.

Even without the evictions by State agencies, the constant emergencies caused by natural disasters render children homeless and vulnerable. Floods, cyclones, earthquakes are also a constant. And each of them affects children. While immediate response is needed, such experiences leave long term impacts that are not often attended to.

There are other changes that have rendered children vulnerable. New ways to determine citizenship has been introduced in Assam, and is being planned across India. Divisions along religion and identity has suddenly reared its ugly head as never before. Caste, ethnicity and gender divides have sharpened too. There has been a huge upsurge in internet usage and online activity. While this has made information more easily available and increased efficiency in some sectors, it has also made the debates more shrill, open and hostile. Children have become more vulnerable to online abuse. All of these changes have had an impact on the lives of the children.

There is a change in the ecosystem for those working for social change and child rights too. For decades, human rights activists, small and big non-governmental organisations (NGOs), community-based organisations (CBOs) reached where government could not, monitored and held governments at different levels accountable, empowered communities to speak or spoke on their behalf. It was an important role that they played. Some of these were groups based on strong ideological positions, while others functioned more in the charity or welfare mode. They were supported by grants raised from international donors (Bilateral aid agencies as well as International Non-Governmental Organisations (INGOs)), philanthropists and sometimes even from government.

But this is fast changing. In the age of specialisations and technical expertise, the child is getting lost in 'competing' interests. Funding support to carry forward the work is becoming a challenge. With the entry of Corporations into the social sector through its Corporate Social Responsibility Funding, rights-based work has taken a beating. As foreign funding has begun to decline, many international funding agencies/ INGOs have registered themselves as domestic agencies and begun to undertake domestic fund raising which compelled them to take up direct implementation work themselves. INGOs are more management systems oriented, better equipped to raise funds than their smaller domestic counter parts. It has ended up shrinking the pool of funds for small domestic organisations with limited capacity to raise funds, and who erstwhile depended on the funding agencies (now turned implementers) for money. As a result, the local/ national organisations are struggling to survive.

The environment of mistrust created around NGOs, especially those that work with a human rights lens, does not help the situation. It is in this backdrop that HAQ presents this status report on children.

This volume of Status of India's Children coincides with HAQ's twenty years and the thirtieth anniversary of the UNCRC. Both are occasions to review how far we have reached in the recognition and realisation of the rights of the children.

On the occasion of the thirtieth anniversary of the UNCRC several reports are being released. In India, six international organisations have come together together under the banner of Joining Forces for Children India, to publish a report, 'Child Rights in India- And Unfinished Agenda.'⁸ It identifies the following areas as needing attention:

1. Sex ratio at birth
2. Violence against children
3. Sexual and reproductive health
4. Access to play and recreation
5. Family and community based protective mechanisms
6. Engagement of children in decision making at family and community level.

It also identifies gender, disability and disaster as the three most important factors that increase vulnerability of children

Status Reports by HAQ in the Past

In 2001 HAQ: Centre for Child Rights had undertaken a decadal analysis of the Union Budget from a child rights perspective, *India's Children and the Union Budget*. In doing so we realised that it needed to be complemented with a situational analysis of children in the country. That's when HAQ published its first status report - *Children in Globalising India: Challenging our Conscience* (2002). It coincided with India's second periodic report to the UN Committee on the Rights of the Child. It had formed an important resource for writing of the alternate report and in advocating to the Committee members on the recommendations it needed to make to the Government in its Concluding Observations.⁹ It was an edited volume based on contributions from experts along with HAQ's own research, and dealt with the situation of children as India went into structural readjustment and adopted a new economic policy.

HAQ's second report, *Status of Children in India Inc.*¹⁰ highlighted how unprotected the children in India were even as the country moved into corporatisation. It also coincided with the formulation of the Eleventh Five Year Plan and was used by the members of the working group working on child rights for its recommendations to the Planning Commission; as well as by the drafting team in the Planning Commission to write the section on child rights. Having gained in confidence, this report was written by the HAQ team on its own.

In 2008, HAQ released its third status report, *Still Out of Focus - Status of India's Children 2008*.¹¹ Even as India was racing to become one of the fastest growing economies in the world, – as the title suggests, this report was an effort at focusing on those children who got left behind – the most vulnerable and excluded categories of children. This report coincided with India's submission of its third report to the UN Committee on the Rights of the Child.

In 2011, HAQ brought out its fourth status report in the form of a child rights index in which all the states were ranked according to certain child rights indicators. The child friendliness index developed by the African Child Policy Forum (ACPF) was the inspiration for undertaking a similar initiative in India. The *Child Rights Index* (CRI)¹² brought out some glaring findings pointing to the states that required greater impetus in the planning and implementation of children's programmes and schemes, what worked, what did not and what remained. The release of the CRI coincided with the ongoing discussions and preparations for the 12th Five Year Plan and was well accepted by the government of India.

In 2011, HAQ also published a 20-year assessment of the implementation of the UNCRC titled *20 Years of CRC: A Balance Sheet*. This was done jointly with others and published in 3 volumes.¹³

Like HAQ's first status report on children in 2002, this one too is a compilation of contributions from a range of experts. As a result, each chapter is also a stand-alone document.

This report is in 2 parts. Part 1 deals with the broader spectrum of cross cutting issues on children-State response, health, education, protection, ecological rights and budget for children. Part 2 addresses the specific issues. Each chapter is stand-alone one for easy reference.

There are so many issues that need to be flagged and addressed, but we have not been able to dedicate full chapters to them. For example, children who are apprehended for offences are not the only ones sometimes lodged in jails. There are children who live in jails with their mothers and leave when they turn six. Children whose parents are in prison are a hugely vulnerable group- stigmatised for no fault of theirs. They need attention and care. Even though falling sex ratio, adoption of children or child trafficking are critical, we have not included them in this report - mostly to ensure that the report does not become too unwieldy. But also, in some limited cases, because some of the writers who had promised to contribute failed to do so.

Status of Children in 2019

In the 2001 census, children below the age of 18 years made up 41 per cent of the population. In the 2011 census, they formed 37 per cent.

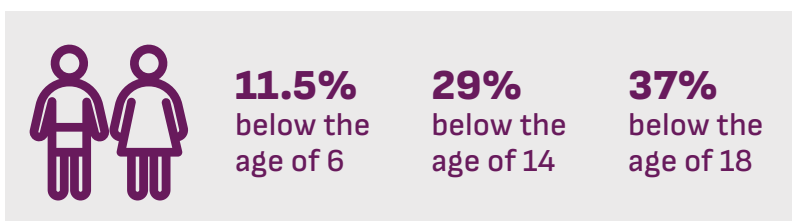


TABLE 2: INDIA AGE STRUCTURE AND SEX RATIO (2020)

Age Group	Males	Male %	Females	Female %	Age Group Population	Age Group's share of total population %
0-4	61,228,414	52.39	55,651,093	47.61	116,879,507	8.47
5-9	61,877,169	52.45	56,104,958	47.55	117,982,127	8.55
10-14	66,302,628	52.56	59,853,324	47.44	126,155,952	9.14
15-19	66,670,855	52.89	59,374,711	47.11	126,045,566	9.13

Source: <https://www.worldometers.info/demographics/india-demographics/#age-structure>

There were 29 states and 7 union territories (UT) in 2011, when the CRI was published. Today, with the abrogation of Article 370 in the state of Jammu and Kashmir and the formation of new UTs of Jammu and Kashmir and Ladakh and Kargil, there are 28 states 9 UTs. There were 593 districts during Census 2001 and 640 during Census 2011. In 2019, there are 731 districts in India. In 2001 there were 227,590 gram panchayats. In 2019, there are 250,000 gram panchayats.¹⁴

These are not mere numbers. These changes affect children greatly as a lot of the infrastructure and services that children are entitled to are available at the district and panchayat levels. For example, every district must have a District Child Protection Unit, a Child Welfare Committee and a Juvenile Justice Board. The same applies to many other services and structures. There are other such requirements at the Panchayat level. Any change in their number also means change in appointment of personnel and creation of infrastructure. And indeed, availability of both personnel who have the capacity, and requisite infrastructure of quality, has remained the biggest challenge for children.

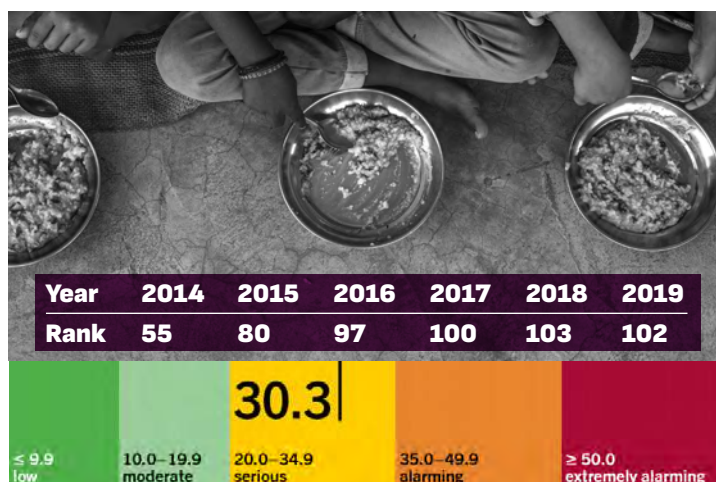
What do Global Rankings Show?

Despite economic advancements, the divide between the haves and the have-nots has sharpened. Hunger and poverty remain a reality.

11-year-old Santoshi died in September last year, the Jharkhand government claimed that the child had died of an illness. However, Santoshi's family contended that they had not been getting rations for six months before her death.¹⁵

Hunger in what is claimed to be one of the fastest growing economies, sounds like a travesty- but is true. In 2014 Global Hunger Index (GHI), India was ranked 55 out of 76 countries. In 2017, it included 44 more countries in the ranking list and India has been ranked 100 out of 119 countries.¹⁶ In 2019 India is ranked at 102 out of 117 countries.

India is 117 out of 181 countries in the KidsRight Index in 2019. This is the annual global index which ranks how countries adhere to and are equipped to improve child rights. Countries are judged on five indicators: right to life, right to education, right to health, right to protection and enabling environment for child rights.¹⁷ Enabling Environment for Child Rights' - or Child Rights Environment in short - is an important and unique domain within the KidsRights Index. It reveals the extent to which countries have operationalised the general principles of the CRC according to the



Data source: Global Hunger Index 2019: india 2019
<https://www.globalhungerindex.org/india.html>



THIS IS WHERE INDIA STANDS IN GLOBAL CHILDHOOD REPORT 2019

- India ranks 113 of 176 countries
- Child mortality rate reduced by 55 per cent in the last two decades in India. It was 88 deaths per 1,000 live births in year 2000 now it was recorded 39 deaths per 1,000 live births in 2017
- India's performance is better than Pakistan (74.9). Sri Lanka (8.8), China (9.3), Bhutan (30.8), Nepal (33.7) and Bangladesh (32.4) have all outperformed India
- Low height for age, among children below age five, fell 25 per cent globally from 198 million children to 149 million between 2000 and 2019
- In India about 38 per cent of children under five were stunted, the second-worst performance compared to its neighbours after Pakistan (40.8 per cent). China (6 per cent) had the lowest rate in the region, followed by Nepal (13.8 per cent), Sri Lanka (17.3 per cent), Bangladesh (17.4 per cent) and Bhutan (19.1 per cent)
- Despite efforts at giving free universal education about 20 per cent of them (aged 8–16) were still out of school as of 2018
- India halved its number of child marriages in 18 years to 2018, while marriage rates for the poorest girls fell at least as much as for everyone else

Source: <https://www.jagranjosh.com/current-affairs/end-of-childhood-index-india-ranks-113-of-176-countries-1560235076-1>

UN Committee on the Rights of the Child (non-discrimination; best interests of the child; respect for the views of the child/participation) and the extent to which there is a basic ‘infrastructure’ for making and implementing child rights policy, in the form of enabling national legislation; mobilisation of the ‘best available’ budget; collection and analysis of disaggregated data; and state-civil society cooperation for child rights.

The End of Childhood Index is part of the Global Childhood Report released in 2019 by Save the Children. India ranks 113 of 176 countries on this index that evaluates countries on the wellbeing of children. The index evaluates countries on eight indicators to determine the wellbeing of children and teenagers (0-19 years): mortality among children under five years of age, malnutrition that stunts growth, lack of education, child labour, early marriage, adolescent births, displacement by conflict and child homicide.¹⁸

Discrimination Still a Reality

Discrimination is part of many children’s lives. Gender discrimination is the beginning of this, followed by the others.

The skewed sex ratio remains a matter of concern despite years of programmes targeting the girl child – the latest avatar being Beti Bachao Beti Padhao. As per the Census, 2011 the child sex ratio (0-6 years) has shown a decline from 927 females per thousand males in 2001 to 919 females per thousand males in 2011. Table 1 shows how the sex ratio decreases with increasing age.

Shri Ghulam Nabi Azad, the then Union Minister for Health and Family Welfare, presented a written reply to the Rajya Sabha on 11 February 2014. According to this, “Some of the reasons for neglect of the girl child and low child sex ratio are son preference and the belief that it is only the son who can perform the last rites, that lineage and inheritance runs through the male line, sons will look after parents in old age, men are the bread winners etc. Exorbitant dowry demand is another reason for female foeticide/infanticide. Small family norm coupled with easy availability of sex determination tests may be a catalyst in the declining child sex ratio, further facilitated by easy availability of pre-conception sex selection facilities.”¹⁹



While the lower sex ratio in the first 6 years has drawn attention, and has led to monitoring and penal action on sex selective abortion—the falling sex ratio in the adolescent age group should force us to ask...

Where are the adolescent girls disappearing?

TABLE 3: SEX RATIO IN 5-YEAR AGE GROUP (CENSUS 2011)

Age group	Total	Rural	Urban
00-04	924	928	912
05-09	914	921	895
10-14	912	917	897
15-19	884	882	887

Source: <http://statisticstimes.com/demographics/sex-ratio-of-india.php>

According to the Ministry of Health and Family Welfare, Government of India (GOI) 2017, only 133 cases have been filed under the PC&PNDT Act in 2016-2017. The previous year it was 190.²⁰ There were 53 cases filed in Haryana (up from 22 in 2015-16); 26 in Rajasthan (up from 20 in 2015-16). All other states showed a fall.

Oommen C. Kurien reminds us that despite increase in levels of enrolment in schools, discrimination on the basis of caste, religion ethnicity, gender and (dis)ability remains. 75 per cent of the more than 6 million children currently out of school in India are either Dalits (32.4 per cent), Muslims (25.7 per cent) or Adivasis (16.6 per cent).²¹ The dropout rates of Dalits (SC) and Adivasis (ST) enrolled in schools is higher than others.

The dropout rates for girls are higher in the primary and upper primary stages. If they manage to reach the secondary stage, then lesser numbers of girls drop out. The challenge is to ensure that they get to school.

TABLE 4: AVERAGE ANNUAL DROP-OUT RATE IN SCHOOL EDUCATION: 2014-15 (IN %)

Level	All			SC			ST		
	Boys	Girls	Total	Boys	Girls	Total	Boys	Girls	Total
Primary	4.36	3.88	4.13	4.71	4.20	4.46	7.02	6.84	6.93
Upper Primary	3.49	4.60	4.03	5.00	6.03	5.51	8.48	8.71	8.59
Secondary	17.21	16.88	17.06	19.64	19.05	19.36	24.94	24.40	24.68
Senior Secondary	0.25	NA	NA	3.34	3.09	3.22	NA	NA	NA

Data Source: National Institute of Educational Planning & Administration, New Delhi. Figures are provisional. NA- Not Available

The 2019 'State of the Education Report for India: Children with Disabilities', based on the 2011 census, said that there are 78,64,636 children with disability in India constituting 1.7 per cent of the total child population. Significant gaps therefore remain, even though successive government schemes and programmes have tried to bring children with disabilities into schools. Three-fourths of the children with disabilities at the age of five years and one-fourth between 5-19 years do not go to any educational institution. Further, the number of children enrolled in school drops significantly with each successive level of schooling. There are fewer girls with disabilities in schools than boys.²² Anita Ghai examines how children with disabilities remain excluded.

Examination of discrimination faced by children and 'othering' is the running theme that underlies all the chapters.

MP: DALIT CHILDREN KILLED OVER OPEN DEFECACTION, POLICE SAY KILLER 'MENTALLY UNSTABLE' THE POLICE HAVE ARRESTED TWO BROTHERS HAKIM YADAV AND RAMESHWAR YADAV FOR BEATING TO DEATH ROSHNI, 12, AND HER 10-YEAR-OLD NEPHEW AVINASH.

Two Dalit children were allegedly beaten to death for defecating in the open in a village in Shivpuri district of Madhya Pradesh on Wednesday.

The police have arrested two brothers Hakim Yadav and Rameshwar Yadav, who belong to the same Bhavkhedi village under Sirsod Police Station, for beating to death Roshni, 12, and her 10-year-old nephew Avinash.

Avinash's father Manoj Valmiki told the police that the two brothers objected to the children defecating in the open near the panchayat building. He said he does not have a toilet at his home, and alleged that the two brothers had scolded the children in the past too.

Manoj, a labourer, said he had an old enmity with the brothers. He said two years ago he had cut the branch of a tree near the agriculture field owned by the Yadav brothers after which they had threatened him with dire consequences.

Inspector General (Gwalior Range) Rajababu Singh, however, told The Indian Express that Hakim is mentally unstable and he killed the two children while they were on way to their grandfather's home.

"When the children were passing from his house he attacked them with sticks. The incident has nothing to do with open defecation and there is no old enmity between the two families," Singh said.

Source: <https://indianexpress.com/article/india/madhya-pradesh-lynching-dalit-kids-defecation-6027169/>

Education – A Right, but Gaps Remain

According to Census 2011, 1 in 4 children of school-going age is out of school in our country – 99 million children in total have dropped out of school. Out of every 100 children, only 32 children finish their school education age-appropriately (District Information System for Education (DISE) 2014-15). Only 2 per cent of the schools offer complete school education from Class 1 to Class 12. Subir Shukla takes us through the evolving story of education in India from pre-school to the secondary level in his chapter and identifies the challenges that the education sector faces.

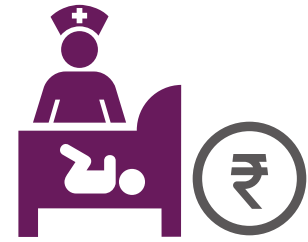
Access to Health – the Widening Gap

Spending on health care pushes 32-39 million Indians below the poverty line every year. India's low public-health spending is one reason why patients turn to the private sector for healthcare, making Indians the sixth biggest out-of-pocket (OOP) health spenders in the low-middle income group of 50 nations in 2017. These costs push around 32-39 million Indians below the poverty line every year, according to various studies.²³

The GOI admits that the cost of treatment has been rising in India and that it has led to inequity in access to health care services. According to GOI, India spends only 1.02 per cent of its GDP (2015-16) as public expenditure on health. Further, per capita public expenditure on health in nominal terms has gone up from ₹621 in 2009-10 to ₹1112 in 2015-16. The Centre: State share in total public expenditure on health was 31:69 in 2015-16. The share of Centre in total public expenditure on health has been declining steadily over the years except in 2017-18.²⁴ It further adds that despite the improvement in health indicators, a huge disparity in the availability of healthcare resources continues to exist in India.

Without a significant increase in its healthcare budget, India's health targets seem difficult to achieve: Reducing the infant mortality rate from 41 deaths per 1,000 live births in 2015-16 to 28 by 2019 and maternal mortality ratio from 167 deaths per 100,000 births in 2013-14 to 100 by 2018-2020 and eliminating tuberculosis by 2025.

There remains a considerable rural urban divide when it comes to healthcare access. There are inter-state differences as well. The more developed states like Kerala, Maharashtra and Tamil Nadu have brought down their IMR, TFR and MMR rates, but states like Assam, Jharkhand continue to grapple with these issues even today.²⁵ Abhijit Das explains how the situation of health services in the country is affecting children in his chapter.

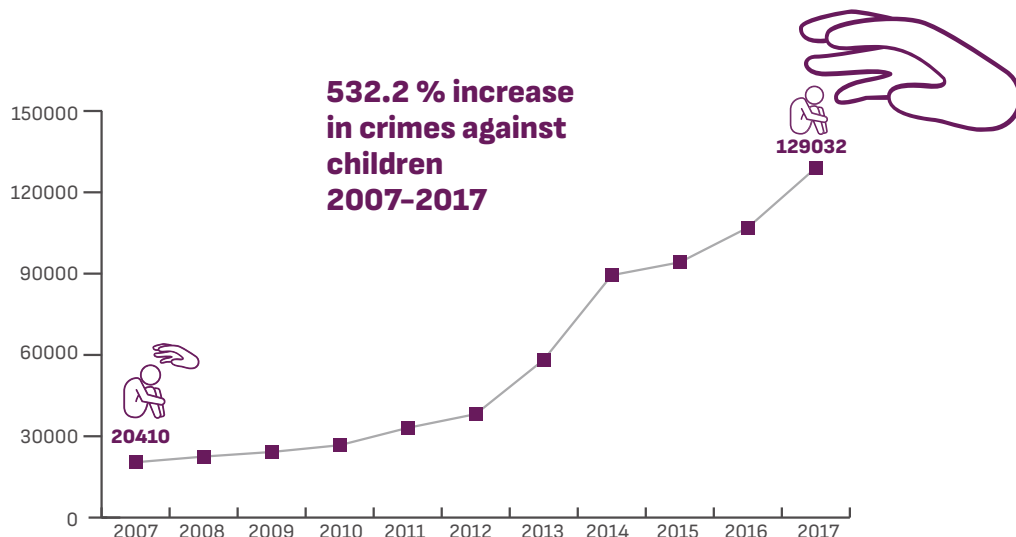


India's per capita expenditure on healthcare among lowest in the world; govt spends as little as ₹3 per day on each citizen.

Crimes Against Children

There is a 532.2 per cent increase in crimes against children in the last decade (Table 4). There is a massive increase in the incidences of kidnapping and abduction and procurement of minor girls. Buying of girls for prostitution has however, gone down by 90 per cent. Although, incidence of child marriages have shown a fall, there is 311.5 per cent increase in reporting.

FIGURE 1 CRIMES AGAINST CHILDREN



Source: NCRB. Crimes in India

The growing concern is about the use of kidnapping charges against young people in what has come to be referred to as ‘love cases’ along with charges of rape or sexual abuse. It is also important to recognise that there is an increase in the reporting, especially sexual crimes after the enactment of the Protection of Children from Sexual Offences (POCSO) Act 2012. To some extent the silence is being broken. But the huge backlog of cases doesn’t help the victims as justice delayed is justice denied. Bharti Ali examines the ‘numbers’ and the debates that surround sexual abuse of children in India.

TABLE 5: SELECTED CRIMES AGAINST CHILDREN

Crime Head / Year	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	% Change between 2007 and 2017
Kidnapping & Abduction	6377	7650	8945	10670	15284	18266	28167	37854	41893	54723	54163	962
Exposure & Abandonment	923	864	857	725	700	821	930	983	885	811	899	-1.1
Procuration of minor girls	253	225	237	679	862	809	1224	2020	3087	2465	3382	1364
Buying of girls for prostitution	40	30	32	78	27	15	6	14	11	7	4	-88.6
Selling of girls for prostitution	69	49	57	130	113	108	100	82	111	122	80	-34.96
Prohibition of Child Marriage Act	96	104	3	60	113	169	222	280	293	326	395	229
Child Rape	5045	5446	5368	5484	7112	8541	12363	13766	10854	19765	10059	113
Importation of girls	61	67	48	36	80	59	31	2	2	5	2	-97
Infanticide	134	140	63	100	63	81	82	121	91	93	73	-42.1
Foeticide	96	73	123	111	132	210	221	107	97	144	115	-8
Murder	1377	1296	1488	1408	1451	1597	1739	1817	1758	1640	1393	-3.93

Source: National Crime Records Bureau. Crime in India, 2006-2016. Government of India.

The heightened anxiety about both crimes against children, especially sexual abuse, as well as crimes by children has led to emotional and shrill outpourings from across the country in the form of more punitive laws. But what is even more worrying is the public taking law into their hands and ‘dispensing (in)justice’. Is this because they have lost faith in the justice system or because they feel emboldened to act with impunity?

Mob justice or trial by media is increasingly becoming the ‘norm’. Is this because they have lost faith in the justice system or because they feel emboldened to act with impunity?

According to NCRB’s Crime in India, 2017, a total of 63,349 children (20,555 male, 42,691 female and 103 transgender) were reported missing in 2017. What is more, during the year 2017, a total of 70,440 children (23,564 males, 46,798 females and 78 transgender) were recovered/traced.

Amid rumours on social media about the presence of child kidnappers in Dokmoka in West Karbi Anglong district, Abhijeet Nath and Nilotpal Das, were attacked and killed by locals.²⁶ Mob attacked a man for trying to ‘kidnap’ a child, but the six-year-old turned out to be his own son who was in the middle of a tantrum. This happened in Jharkhand’s Jamtara district, once again based on child lifting rumours. “The child lifting hysteria that gripped parts of Jharkhand hinterland may have its

roots in the vulnerability of children to traffickers and kidnappers prowling the interiors of the State, police officials working at the grass root level said on Friday.²⁷ At least 40 incidents of persons being thrashed on suspicion of child lifting have been reported from different parts of Jharkhand in one week in September 2019.

There have been several such incidents in north India, including in Delhi, where people have been thrashed over allegations of child lifting. In one such attack two engineers were beaten up in Bihar's Samastipur while they were conducting a survey for a new rail line project.²⁸

With access to new internet-based technology, children are becoming exposed to different kinds of violence that families are ill-equipped to handle. The Blue Whale Challenge and the short duration videos on the popular new platform, Tik Tok are but only examples. Child welfare workers in private conversations express helplessness not knowing how to support children and their families, and protect them, in the online world the new forms of vulnerability they find children exposed to every day. What begins with online connect, leading to online dating, then meeting in person and finally violence and even trafficking is difficult to track and prevent. What begins as consensual online interaction leads to multiple levels of violence.

There are some positives as well. The increased conversation on violence against children, especially sexual violence also means that there is greater reporting. In fact, the increased numbers must not be treated only as increased violence, but also recognised as increased reporting.

The chapter by Nicole Rangel Menezes traces the debate on child protection, while specific chapters deal with the issues such as children in conflict with the law by Shruthi Ramakrishnan and Swagata Raha; the chapter on child marriage by Enakshi Ganguly and Indira Pancholi.

Ecological Rights for Children – the Need of the Hour

Sixteen-year-old climate change activist, Greta Thunberg has taken the world by storm. She has been passionately campaigning against climate change and holding the adults of the world accountable for what they will leave behind. Her message has not only spread the word, but also enlisted many to be on the streets for protection of the environment. Given the importance of addressing ecological rights of children, we have included a chapter by George Chira on this subject.

New Policy, Plans and Laws

Between 2011 and 2019, a new National Policy for Children was adopted in 2013, as was a new National Plan of Action for Children in 2016. In 2012, the first ever law on child sexual abuse was enacted titled the Protection of Children for Sexual Offences (POCSO) Act. There have also been amendments to laws- mired in controversy and protest.

The watershed proved to be the gruesome rape and murder of the woman who came to be known as Nirbhaya, after it was found one of the alleged offenders was a person below 18 years (referred to by several authors in this volume), followed by more cases of rape and murder of children.

The public bayed for blood, and the government obliged by amending the laws. A provision of transfer for 16 to 18-year olds to be tried as adults in case of serious crimes was introduced in the JJ Act; and death penalty for child rapists was made part of the POCSO Act. In 2016, the Child Labour (Prohibition and Regulation) Act was amended. It banned all child labour up to the age of 14 years and introduced a new category of Adolescent labour to address children in the 15-18 years age group. But this law too caused controversy because it introduced a proviso that allowed children to work as part of family- based occupations (discussed in detail by Prabir Basu).

We are already witnessing impact of these ‘populist’ laws on the lives of children. What was anticipated as ‘problems’ with the amendments by experts and practitioners, leading to protest and controversy, is already a reality. What is lost in all of this is justice and protection of children- the very purpose of these laws. All this has been discussed in detail in different chapters in this report. (For a complete list of Laws, Policies and Plans for Children see Annexure 1)

Growing reports of ‘failed adoptions’ in an environment in which the government is pushing for adoption of children²⁹, and even amending the Juvenile Justice (Care and Protection of Children) Act, 2015 to give greater powers to District Magistrates to pass orders on adoption³⁰, means this is an issue crying for more attention. Adoption is closely inked to trafficking.

Karuna Bishnoi contends that the children of India have an ambivalent relationship with the State. The phase after the ratification of the UNCRC in the 1990s began the discussion on rights -based approach which got sufficiently established in the 2000s. While this phase has witnessed the definition of ‘child’ being expanded to the age of 18 years, enactment of several laws and formulation of policies, programmes and schemes, it has also witnessed the reversal of many progressive steps. New challenges have emerged based on changing circumstances, and yet the response from the State has not been always appropriate or adequate.

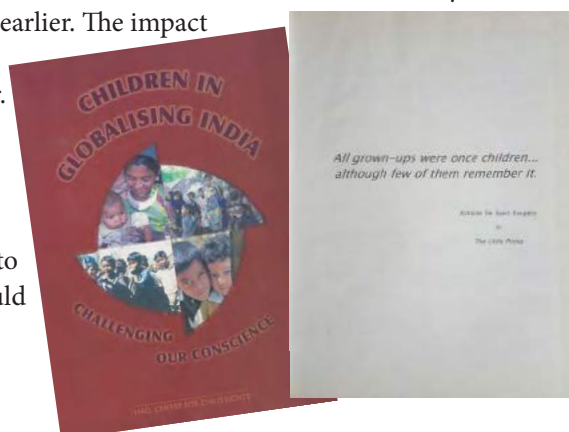
As Bishnoi dwells on the commitments made by India by ratifying the UNCRC, it becomes important to dwell on the General Comments of the UN Committee on the Rights of the Child through which they expand upon and explain certain sections of the UNCRC articles. The most recent General Comment was released in September 2019 General Comment No. 24 is as recent as September 2019. We have found that there is very little knowledge about these General Comments amongst those who focus on children- both within and outside government. (For a list of General Comments see Annexure 2).

With the controversy surrounding laws on children and reports of child rape and offences by children, there was a sudden spurt in interest the media showed on children’s issues. Media is a two- edged sword. An out of control media can play havoc. We have seen that while media has played a big role in the last five years to bring traction to issues related to children, it has also contributed to creating ‘public perceptions’ based on misinformation and mis-interpreted data, resulting in knee jerk reactions from government. Not just mainstream media, social media too has played a big role in this. For the first time HAQ has included a chapter on role of media, by Biraj Swain, in its status report.

Conclusion

In 2006, Nico Van Oudenhoven and Rekha Wazir had explored the newly emerging needs of children.³¹ These ranged from reports about children with multiple parents and open access to adult information and experiences to an increasing vulnerability of children to diseases previously associated only with adults. Their study showed the importance of continuously exploring and mapping the changing circumstances and needs of children, and the need to simultaneously innovate responses to these. This is as true of 2019 as it was earlier. The impact of the market, the internet, climate change has all drastically changed children’s needs and behaviour. The response too needs to change.

In 2002, we began by quoting Antoine de Saint-Exupéry in the Little Prince. Wish adults today, and those who are adults in the making, continue to remember that they were once children too. It would help to mitigate the challenges faced by children today.



Annexure 1

Laws, Policies and Plans for Children in India

Constitutional Guarantees

Specific to Children

Article 21 A	Right to free and compulsory elementary education for all children in the 6-14 year age group
Article 24	Right to be protected from any hazardous employment till the age of 14 years
Article 39(e)	Right to be protected from being abused and forced by economic necessity to enter occupations unsuited to their age or strength
Article 39 (f)	Right to equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and guaranteed protection of childhood and youth against exploitation and against moral and material abandonment
Article 45	Right to early childhood care and education to all children until they complete the age of six years

Other Constitutional Provisions

Article 14	Right to equality
Article 15	Right against discrimination and duty of the state to take to special measures for children
Article 20	Right of convicts against being subjected to double jeopardy
Article 21	Right to personal liberty and due process of law
Article 22	Right against illegal arrest and detention and right to legal representation
Article 23	Right to being protected from being trafficked and forced into bonded labour
Article 29	Right of minorities for protection of their interests
Article 46	Right of weaker sections of the people to be protected from social injustice and all forms of exploitation
Article 47	Right to nutrition and standard of living and improved public health

Special Laws

Laws That Have Direct Bearing on Child Rights

1875	Indian Majority Act
1890	Guardians and Wards Act (as amended in 2010)
1956	Immoral Traffic (Prevention) Act (amended in 1978 and 1986)
1956	Women's and Children's Institutions (Licensing) Act
1956	Hindu Adoption and Maintenance Act (as amended in 2010 and 2019)
1956	Hindu Succession Act (as amended in 2005)
1956	Young Persons (Harmful Publications) Act
1960	Orphanages and Other Charitable Homes (Supervision and Control) Act
1961	Maternity Benefits Act (amended in 2008)
1969	Registration of Births and Deaths Act
1971	Medical Termination of Pregnancy Act (as amended in 2002)

1986	Child Labour and Adolescent Labour (Prohibition and Regulation) Act (as amended in 2016)
1992	Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act (as amended in 2003)
2003	Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act
2005	Commissions for the Protection of Child Rights Act (as amended in 2006)
2006	Prohibition of Child Marriage Act
2009	Right of Children to Free and Compulsory Education Act
2012	Protection of Children from Sexual Offences Act (as amended in 2019)
2015	Juvenile Justice (Care and Protection of Children) Act

Other Special Laws Related to Children

1925	Indian Succession Act
1937	Muslim Personal Law (Shariat) Application Act
1948	Factories Act (as amended in 1949, 1950 and 1954)
1951	Plantations Labour Act (Amended in 1953, 1960, 1961, 1981, 1986 and 2010)
1952	Mines Act
1954	Special Marriage Act
1955	Hindu Marriage Act
1956	Probation of Offenders Act
1958	Merchant Shipping Act
1961	Apprentices Act (as amended in 1964, 1968, 1973, 1986, 1997 and 2014)
1961	Motor Transport Workers Act
1966	Beedi and Cigar Workers (Conditions of Employment) Act
1970	Contract Labour (Regulation and Abolition) Act
1976	Bonded Labour System (Abolition) Act
1978	Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (came into force w.e.f 25 June 1987)
1986	Indecent Representation of Women (Prohibition) Act
1987	Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act
1989	Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act
1992	Rehabilitation Council of India Act
1994	Transplantation of Human Organ Act
2000	Information Technology Act (as amended in 2008)
2005	Protection of Women from Domestic Violence Act
2013	National Food Security Act
2016	Rights of Persons with Disabilities Act
2017	Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention And Control) Act
2017	Mental Healthcare Act

Local Laws

Child Specific Legislation

2003 Goa Children's Act

Other Local laws Related to Children

1959 Bombay Prevention of Begging Act (Applicable in Delhi also though Delhi High Court decriminalised beggary by striking down certain provisions of the law as unconstitutional in 2018)

1982 Karnataka Devadasi (Prohibition of Dedication) Act

1986 Andhra Pradesh Devadasi's (Prohibition of Dedication) Act

Criminal Laws

- **Foeticide (Sex Selective Abortion) and Infanticide**

Provisions in the Indian Penal Code (IPC), 1860

Section 299 and When death is caused by a person
Section 300

Section 312 Voluntarily cause a pregnant woman to miscarry the unborn baby

Section 313 Causing miscarriage without woman's consent

Section 315 Act done with intent to prevent child being born alive or to cause it to die after birth

Section 316 Causing death of quick unborn child

Section 317 Exposing and abandoning of child below 12 years

Section 318 Concealing the birth of child by secretly disposing her/his body

- **Child and Bonded Labour or Child Slavery and Servitude**

Provisions in the Indian Penal Code (IPC), 1860

Section 374 Unlawful compulsory labour

- **Child Sexual Abuse**

Provisions in the Indian Penal Code (IPC), 1860

Section 166A (c) Failure by a public servant to record FIR in relation to offences punishable under sections 354, 354B, 370,370A,376,376A. 376AB, 376B, 376C, 376D, 376DA,376DB, 376E or 509 of IPC

Section 166B Failure on the part of a hospital, private or public, run by central/state government or a local body or any other person to provide treatment to a rape victim

Section 228 A Disclosure of identity of a minor victim of rape is permitted only on the written authorisation of the next of kin of the victim

Section 293 Selling, hiring, distributing, exhibiting or circulating obscene objects to persons below the age of 20 years

Section 354 Assault or criminal force to a woman with intent to outrage her modesty

Section 354A (2) Sexual Harassment (physical contact and advance, sexual overtures, demand for sexual favours, showing pornography against will)

Section 354A (3) Sexual Harassment (making sexually coloured remarks)

Section 354B Assault or use of criminal force to woman with intent to disrobe (abetment included)

Section 354C	Voyeurism (watching or capturing image of a woman engaging in a private act or disseminating such images)
Section 354D	Stalking (physical/electronic)
Section 376(1)	Rape
Section 376(2)	Aggravated Rape (includes rape by a police officer/public servant/person of armed forces/staff or management of jail/staff or management of hospital/staff or management of other institutions, rape while in police custody, rape of a pregnant woman or woman with disability, repeated rape on the same woman, etc.)
Section 376(3)	Rape of a girl below 16 years of age
Section 376A	Rape causing death or resulting in persistent vegetative state of victim
Section 376AB	Rape of a woman under 12 years of age
Section 376B	Sexual intercourse by husband upon his wife during separation
Section 376C	Sexual intercourse by a person in authority (includes superintendent or manager of children's institutions)
Section 376D	Gang rape
Section 376DA	Gang rape on a woman under 16 years of age
376DB	Gang rape on a woman under 12 years of age
Section 376E	Repeat and multiple offences under sections 376, 376A, 376AB, 376D, 376DA, 376DB
Section 377	Unnatural Offences
Section 493	Cohabitation caused by a man deceitfully inducing a belief of lawful marriage
Section 509	Word, gesture or act intended to insult the modesty of a woman

Provisions in the Code of Criminal Procedure (CrPC), 1973

Section 26	All rape cases to be tried by a court presided over by a woman judge as far as practicable
Section 154 (1) Proviso	Information of rape or other forms of sexual violence recognised under sections 354, 354 A to D, 376, 376 A to E and 509 of IPC given by a woman against whom such an offence is alleged to have been committed or attempted, shall be recorded by a woman police officer or woman officer
Section 154 (1) Second Proviso (a to c)	Information of rape or other forms of sexual violence recognised under sections 354, 354 A to D, 376, 376 A to E and 509 of IPC given by a victim who is mentally or physically disabled, to be recorded at the residence of the victim/ person reporting the offence or at a convenient place of such person's choice, in the presence of an interpreter or special educator, videographed and recoded before a Judicial Magistrate as soon as such information is brought to the notice of the police
Section 154 (2)	Copy of FIR to be given to the informant free of cost
Section 154 (3)	Person aggrieved by refusal of the police officer in charge of a police station to register an FIR in case of a cognizable offence can write to the Superintendent of Police, who in turn shall carry out the investigation himself or assign the investigation to a subordinate officer and assume powers of the officer in-charge of the concerned police station
Section 157 (1) Second Proviso	Recording of statement of a rape victim at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality

Section 161	Statement of a victim of rape or other forms of sexual violence recognised under section 354, 354 A to D, 376, 376 A to E and 509 of IPC to be recorded by a woman police officer or a woman officer. Statement can also be recorded by audio-visual means.
Section 164 (5A)	Mandatory and immediate recording of the statement of a victim of rape or other forms of sexual violence recognised under section 354, 354 A to D, 376 (1), 376 (2), 376 A to E and 509 of IPC by a Judicial Magistrate as soon as the commission of such an offence is brought to the notice of the police;
Section 164 (5A) Proviso	Assistance of interpreter or special educator to be provided in case of mentally or physically challenged victims and their statements to be video graphed and considered in lieu of examination-in-chief and cross-examination in the course of trial.
Section 164 A	Medical examination of a rape victim and the procedure to be followed, including the need to take consent of the victim for the examination
Section 173 (1A)	Police investigation in case of rape of a child may be completed within two months from the date on which the information was recorded by the officer in charge of the police station.
Section 173 (2) (h)	Final Report of the police on completion of investigation to include information regarding report of medical examination of a rape victim
Section 197 (1) Explanation	No sanction required for prosecution of a public servant accused of rape, trafficking or any other sexual offence recognised under sections 354, 354 A to D, 370, 375, 376, 376 A, C and D to E and 509 of IPC or accused of an offence under section 166 A or 166 B of IPC
Section 198 (6)	Court not to take cognizance of an offence of rape of a woman below the age of 18 years by her own husband after a lapse of one year from the date of commission of such offence
Section 273 Proviso	Court to ensure that a rape victim below the age of 18 years is not confronted by the accused at the time of taking her evidence and the accused's right to cross-examination is also maintained
Section 309 (1) Proviso	Rape trials to be completed as far as possible within a period of two months from the date of filing of the charge sheet
Section 327(2)	In camera trial of all rape cases
Section 357 B	In case of gang rape or rape of minors, compensation payable under section 357 A of CrPC to be in addition to payment of fine to the victim
Section 357 C	Public and private hospitals to provide free first aid or medical treatment to victims of rape and inform the police about the incident immediately
Section 374	Appeal against a sentences passed under sections 376 and 376 A to E of IPC to be disposed within 6 months from the date of filing the appeal
Section 438 (4)	No anticipatory bail in certain cases of sexual offences against minors (under sections 376(3), 376AB, 376DA, 376DB of IPC)
Section 439 (1) Proviso	Notice of bail application filed in any High Court of Court of Session to be given to the Public Prosecutor within 15 days of such application in certain cases of sexual offences against minors (under sections 376(3), 376AB, 376DA, 376DB of IPC)
Section 439 (1A)	Presence of informant or person authorised by informant is obligatory at the time of hearing bail application in certain cases of sexual offences against minors (under sections 376(3), 376AB, 376DA, 376DB of IPC)

Provisions in the Indian Evidence Act (IEA), 1872

Section 53 A	While dealing with the issue of consent in a trial of a case of rape or sexual offences under section 354, 354 A to D, 376, 376 A to E of IPC, evidence of character of the victim or previous sexual experience is not relevant
Section 114 A	Where a woman alleged to have been raped as per section 375 of IPC tells the court that she did not consent, the court shall presume no consent. This provides some relief to the 16-18 year old victims of rape.
Section 146 (3) Proviso	In a rape trial or trial of attempt to rape, questions regarding immoral character, previous sexual experience of the victim are not allowed during cross-examination

• **Child Trafficking**

Provisions in the Indian Penal Code (IPC), 1860

Section 363	Kidnapping from lawful guardian or kidnapping beyond the limits of India
Section 363A	Kidnapping or maiming a minor for purposes of begging
Section 366	Kidnapping or abducting a woman to compel her to marry any person against her will, or to force or seduce her to illicit intercourse
Section 366A	Inducing a minor girl under the age of 18 years to go from any place or do any act with the intent to or knowledge that she is likely to be forced or seduced into illicit intercourse with another person
Section 366B	Importation of a minor girl under the age of 21 years from a foreign country with the intent to or knowledge that she is likely to be forced or seduced into illicit intercourse with another person
Section 371	Habitually importing, exporting, removing, buying, selling, trafficking or dealing in slaves
Section 370(4)	Trafficking of minor
Section 370(5)	Trafficking of more than one minor
Section 370(6)	Repeat offence of trafficking of minor(s)
Section 370A (1)	Sexual exploitation of a trafficked manner
Section 372	Selling a minor for prostitution or such other immoral purposes
Section 373	Buying a minor for prostitution or such other immoral purposes
Section 498	Taking away or enticing or detaining a married woman with the intent that she may have illicit intercourse with any person and concealing such intent from her

Criminal Laws Miscellaneous

Indian Penal Code (IPC), 1860

Section 82	Age of criminal responsibility is fixed at 7 years as nothing done by a child under 7 years of age is an offence
Section 83	<i>Doli incapax</i> – Need to establish sufficient maturity of a child between the ages of 7 to 12 years with respect to a particular act of crime as nothing is an offence which is done by such a child, who has not attained sufficient maturity of understanding to judge the nature and consequences of his action
Section 185	Illegal purchase or bid for property by a public servant on account of a Person who does not have the legal capacity to do so by himself/herself
Section 299	Offence of culpable homicide is made out when the death of a living
Explanation 3	child is caused and any part of that child has been brought forth, even though the child may not have breathed or been completely born

Section 304B	Dowry death
Section 305	Abetment of suicide of child (person under 18 years) or insane person
Section 310 and 311	Habitual association with others for child-stealing by means of or accompanied with murder
Section 314	Causing death of a woman with the intent to causing miscarriage of such woman with or without her consent
Section 326A	Voluntarily causing permanent or partial damage or deformity to, or burns or maims or disfigures or disability or grievous hurt by use of acid, etc.
Section 326B	Voluntarily throwing or attempting to throw acid or using other means with the intent to cause permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt grievous hurt
Section 369	Kidnapping a child under the age of 10 years with intent to dishonestly take any moveable property from the person of the child
Section 496	Going through the marriage ceremony with fraudulent intention
Section 498A	Husband or a relative of the husband subjecting a woman to cruelty

The Code of Criminal Procedure (CrPC), 1973

Section 51(2)	Search of a female be made by a female only with strict regard to decency
Section 53(2)	Medical examination of a female only by a female or under supervision of a female registered medical practitioner
Section 98	Power to compel immediate restoration of a woman or a female under 18 years of age abducted for unlawful purpose or detained unlawfully
Section 125	Maintenance for a dependent wife and children
Section 160	Police Officer to reach certain persons at their residence for purposes of investigation instead of requiring their attendance before the police officer or in the police station. These include a male witness under the age of 15 years, or a woman, or a person above the age of 65 years, or a mentally/physically challenged person.
Section 167	In case of an accused woman under eighteen years of age, the Magistrate can order detention only in the custody of a remand home or recognised social institution.
Section 357 A	Victim compensation scheme to be put in place by the central and state governments. In addition court to have powers to order compensation in certain cases where the accused is acquitted or where there has been no trial by the victim requires rehabilitation. Also, State/District Legal Services Authorities to order free medical care and treatment.

The Indian Evidence Act (IEA), 1872

Section 119	Court to take assistance of interpreter or special educator in recording evidence of a person unable to communicate verbally and video graph such statement
Section 151	It lays down that the court may forbid questions or inquiries that it regards indecent or scandalous

Policies

Policy documents specifically for children

1986	National Policy on Education (modified in 1992 along with the Programme of Action, 1992)
1986	National Policy on Child Labour

2003	National Children's Charter
2013	National Early Childhood Care and Education Policy
2013	National Policy for Children
2016	National Plan of Action for Children

Other policy documents having a bearing on children's rights:

1993	National Nutrition Policy
2000	National Population Policy
2001	National Policy for the Empowerment of Women
2017	National Health Policy
2003	National Aids Prevention and Control Policy
2006	National Policy for Persons with Disabilities
2014	National Youth Policy
2014	National Mental Health Policy
2015	National Policy for Skill Development and Entrepreneurship

Annexure 2

List of General Comments to UNCRC

S. No.	General Comment No.	Subject	Date Of Adoption
1	General Comment No. 1	The Aims Of Education	17 April 2001
2	General Comment No. 2	The Role Of Independent National Human Rights Institutions In The Protection And Promotion Of The Rights Of The Child	15 November 2002
3	General Comment No. 3	HIV/AIDS And The Rights Of The Children	17 March 2003
4	General Comment No. 4	Adolescent Health And Development In The Context Of The Convention On The Rights Of The Child	21 July 2003
5	General Comment No. 5	General Measures Of Implementation Of The Convention On The Rights Of The Child	03 October 2003
6	General Comment No. 6	Treatment Of Unaccompanied And Separated Children Outside Their Country Of Origin	01 September 2005
7	General Comment No. 7	Implementing Child Rights In Early Childhood	20 September 2006
8	General Comment No. 8	The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts. 19; 28, Para. 2; And 37, Inter Alia)	02 March 2007
9	General Comment No. 9	The Rights Of Children With Disabilities	13 November 2007
10	General Comment No. 10	Children's Rights In Juvenile Justice	25 April 2007 (Replaced by General Comment 24)
11	General Comments No.11	Indigenous Children And Their Rights Under The Convention	12 February 2009
12	General Comments No.12	The Right Of The Child To Be Heard	20 July 2009
13	General Comment No. 13	The Right Of The Child To Freedom From All Forms Of Violence	18 April 2011
14	General Comment No. 14	The Right Of The Child To Have His Or Her Best Interests Taken As A Primary Consideration (Art. 3, Para. 1)	29 May 2013
15	General Comment No. 15	The Right Of The Child To The Enjoyment Of The Highest Attainable Standard Of Health (Art. 24)	17 April 2013
16	General Comment No. 16	State Obligations Regarding The Impact Of The Business Sector On Children's Rights	17 April 2013
17	General Comment No. 17	The Right Of The Child To Rest, Leisure, Play, Recreational Activities, Cultural Life And The Arts (Art. 31)	17 April 2013
18	Joint General Recommendation / General Comment No. 18 Of The Committee And No. 31 Of The CEDAW	The Rights Of The Child On Harmful Practices	14 November 2014
19	General Comment No. 19	Public Budgeting For The Realisation Of Children's Rights (Art. 4)	21 July 2016
20	General Comment No. 20 (2016)	Implementation Of The Rights Of The Child During Adolescence	06 December 2016
21	General Comment No. 21	Children In Street Situations	21 June 2017

S. No.	General Comment No.	Subject	Date Of Adoption
22	Joint General Comment No. 22 Of Crc & General Comment No. 3 Of The Committee On The Protection Of The Rights Of Migrant Workers And Members Of Their Families	General Principles Regarding The Human Rights Of Children In The Context Of International Migration	16 November 2017
23	Joint General Comment No. 23 Of The Crc And General Comment No. 4 Of The Committee On The Protection Of The Rights Of Migrant Workers And Members Of Their Families	State Obligations Regarding The Human Rights Of Children In The Context Of International Migration In Countries Of Origin, Transit, Destination And Return	16 november 2017
24	General Comment No. 24	Children's Rights In The Child Justice System	18 September 2019

Endnotes

- 1 HAQ:Centre for Child Rights. 2002. Children in Globalising India: Challenging Our Conscience. <http://haqcr.org/publication/children-globalising-india-challenging-our-conscience/> Last accessed on 12 November 2019
- 2 India's economy to be world's 2nd fastest growing at 6% <https://economictimes.indiatimes.com/news/economy/indicators/indias-economy-to-be-worlds-2nd-fastest-growing-at-6/articleshow/71322804.cms?from=mdr> Last accessed on 9 October 2019
- 3 Income inequality gets worse; India's top 1% bag 73% of the country's wealth, says Oxfam <https://www.businesstoday.in/current/economy-politics/oxfam-india-wealth-report-income-inequality-richests-poor/story/268541.html> Last accessed on 9 October 2019
- 4 Agriculture Policy: Vision 2020 Indian Agricultural Research Institute, New Delhi. http://planningcommission.nic.in/reports/genrep/bkpap2020/24_bg2020.pdf Last accessed on 10 October 2019
- 5 Sood, Jyotika India's deepening farm crisis: 76% farmers want to give up farming, shows study <https://www.downtoearth.org.in/news/indias-deepening-farm-crisis-76-farmers-want-to-give-up-farming-shows-study-43728> Last accessed on 12 October 2019
- 6 HAQ: Centre for Child Rights and Samata. 2010. Why should we be concerned about children in mining areas? <https://www.haqcr.org/new-at-haq/why-should-we-be-concerned-children-mining-areas/> Last accessed on 12 November 2019
- 7 Housing and Land Rights Network. 2019. Forced Evictions in India in 2018. An Unabating Crisis. https://www.hlrn.org.in/documents/Forced_Evictions_2018.pdf Last accessed on 12 November 2019
- 8 Joining Forces for Children- India. 2019 Child Rights in India. An Unfinished Agenda.
- 9 Concluding Observations are detailed recommendations that the UN Treaty bodies give to Governments at the end of a review of the country reports.
- 10 HAQ: Centre for Child Rights. 2005. Status of Children in India Inc. <http://haqcr.org/publication/status-children-in-india-inc/> Last accessed on 12 November 2019
- 11 HAQ: Centre for Child Rights. 2008. Still Out of Focus. Status of India's Children. <http://haqcr.org/publication/status-indias-children-2008/> Last accessed on 12 November 2019
- 12 HAQ: Centre for Child Rights. 2011. India Child Rights Index. <http://haqcr.org/publication/indiachild-rights-index-2011/> Last accessed on 12 November 2019
- 13 HAQ: Centre for Child Rights and terres des Hommes (G). 2011. Twenty Years of CRC- A Balance Sheets (Volumes I-III). <http://haqcr.org/publication/twenty-years-crc-balance-sheet-volume-i/> Last accessed on 12 November 2019
- 14 http://censusindia.gov.in/Census_And_You/Administrative_division.aspx Last accessed on 12 November 2019
- 15 Patel, Vikram. 26 July 2018. Starvation deaths in 2018. Stunting due to hunger also holds back the prospects of an entire generation.
- 16 Singh, Anamika. India's performance in Global Hunger Index & its initiatives to address Malnutrition. https://www.niti.gov.in/niti/writereaddata/files/document_publication/Indias%20performance%20in%20Global%20Hunger%20Index.pdf Last accessed on 22 October 2019
- 17 KidsRights Index is an initiative of Kids Right Foundation in cooperation with Erasmus University, Rotterdam. <https://www.kidsrightsindex.org/> Last accessed on 12 November 2019
- 18 https://resourcecentre.savethechildren.net/node/515264/pdf/ch1338551_0.pdf Last accessed on 12 November 2019
- 19 Press Information Bureau, Government of India, Ministry of Health and Family Welfare. <https://pib.gov.in/newsite/printrelease.aspx?relid=103437> Last accessed 30 October 2019
- 20 <https://data.gov.in/resources/stateut-wise-cases-filed-under-pre-conception-and-pre-natal-diagnostic-techniques-act> Last accessed 26 September 2019
- 21 Kurian, Oommen C. 02 April 2015. When schools continue to exclude, can education reduce caste discrimination in India? <https://www.oxfamindia.org/blog/when-schools-continue-exclude-can-education-reduce-caste-discrimination-india> Last accessed on 12 November 2019
- 22 http://www.unesco.org/new/en/newdelhi/about-this-office/single-view/news/unesco_new_delhi_launches_2019_state_of_the_education_report/ Last accessed 25 September 2019
- 23 Yadavar, Swagata. 21 June, 2018. India's per capita expenditure on healthcare among lowest in the world; govt spends as little as Rs 3 per day on each citizen. Firstpost. https://www.firstpost.com/india/indias-per-capita-expenditure-on-healthcare-among-lowest-in-the-world-govt-spends-as-little-as-rs-3-per-day-on-each-citizen-4559761.html-laid_7403191 Last accessed 25 September 2019
- 24 Central Bureau of Health Intelligence. Directorate General of Health Services Ministry of Health & Family Welfare. National Health Profile 2018. page XV. <http://www.cbhidghs.nic.in/WriteReadData/l892s/Before%20Chapter1.pdf> Last accessed on 12 November 2019
- 25 Ibid page XIII
- 26 Choudhury, Ratnadeep. 2 Men, Mistaken For Child Kidnappers, Beaten To Death In Assam <https://www.ndtv.com/india-news/2-men-mistaken-for-child-abductors-allegedly-beaten-to-death-in-assam-1864964> . Last accessed 21 September 2019
- 27 Roy, Saurav. Saturday, 07 September 2019. Child lifting hysteria grips Jharkhand. <https://www.dailypioneer.com/2019/state-editions/child-lifting-hysteria-grips-jharkhand.html> Last accessed on 17 October 2019

- 28 Dey, Sanjoy.6 September 2019. Jharkhand man thrashed for kidnapping child, who turned out to be his own son. Hindustan Times <https://www.hindustantimes.com/ranchi/man-thrashed-for-kidnapping-child-who-turned-out-to-be-his-own-son/story-udUiRTrqf8qmjzYZlkhf2J.htm> Last accessed on 12 November 2019
- 29 <https://timesofindia.indiatimes.com/india/Maneka-Gandhi-sends-700-letters-to-push-for-adoptions/article-show/38154355.cms> Last accessed on 7 October 2019
- 30 <https://www.hindustantimes.com/india-news/ministerial-panel-okays-proposal-to-make-district-magistrates-final-authority-in-child-adoption-cases/story-ktdEyHOTcud1ROeQTPIFEL.html> Last accessed on 7 October 2019
- 31 Oudenhoven, Nico Van and Rekha Wazir.2006 Newly Emerging Needs of Children. An Exploration. Garant

PART I

2

ROLE OF THE STATE IN ADVANCING CHILD RIGHTS

Overcoming Ambivalence

KARUNA BISHNOI



Introduction

The relationship of the state with the child in India needs to be revisited to explore whether the State has been consistent in viewing the child as a citizen and a rights holder and has been able to translate its commitments to results on the ground. Several significant developments have taken place ever since India ratified the UN Convention on the Rights of the Child (UNCRC) in 1992. The phase beginning 2000, after the child rights discourse was sufficiently established, has witnessed the definition of 'child' being expanded to the age of 18 years, enactment of several laws and formulation of policies, programmes and schemes, as well as the reversal of many progressive steps.

The relationship between the child and the State is important but less explored. The analysis in Myron Weiner's seminal work in 1991, "The Child and the State in India",¹ was part of an enquiry into why India had not been able to ban child labour and make primary education compulsory in the decades after the Constitutional provisions. Tracing the evolution of child rights discourse in India, Vijayalakshmi Balakrishnan's "Growing Up and Away" in 2011,² critically enquired the state-child relationship after Independence to the current period. Enakshi Ganguly Thukral (Ed) in "Every Right for Every Child-Governance and Accountability"³ in 2011 collated experiences of efforts to make government systems more responsive and accountable for the realisation of child rights.

This chapter focuses on a few key developments, especially in response to the stated position of the government since India ratified the UNCRC, their effects and impacts, and major impediments to progress. Based on the patterns identified in the relationship, it seeks to identify issues that deserve the attention of the government, civil society and other stakeholders in the interests of a robust national agenda for children.

State as the duty bearer is the *parens patriae* of the child as the citizen. The State's obligation towards children was first articulated in the Indian Constitution. Several significant developments have taken place ever since India ratified the UN Convention on the Rights of the Child (UNCRC) in 1992. But it is also a saga of shifting goalposts.

Background

The State's obligation towards children was first articulated in the Indian Constitution. The Fundamental Rights and Directive Principles of the State Policy in the Constitution make it imperative for the government to secure the non-negotiable and justiciable fundamental rights for all citizens, including children, and be guided by the letter and spirit of the directive principles in the articulation of policy and legislation. Article 15 (3) of the Constitution makes it obligatory for the State to make special provisions for children.

With India's commitment to a growing body of international treaties and regional agreements, the State's obligation towards children has been advanced and nuanced further. Amongst the international human rights treaties that India has signed, the CRC makes it imperative for the State parties (or the sovereign governments that had ratified it) to enable all children to realise their full potential without discrimination, and if need be with positive discrimination or affirmative action in the interests of particularly disadvantaged or vulnerable groups of children.

The State Parties are expected to undertake all appropriate legislative, administrative and other measures based on the 'best interests' of the child principle by engaging all sectors of society, including children. All actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, need to be based on the consideration of the best interests of the child in both short and long-term. Furthermore, sufficient budgetary allocations at national and sub-national levels for children need to be commensurate with the priorities emanating from a scrutiny of their situation. The plans of action for children, conforming to carefully crafted standards and with adequate human resources and competent supervision by public and private institutions, services and facilities for children, need to be rolled out with effective monitoring mechanisms.

The obligations of States parties to implement economic, social and cultural rights 'to the maximum extent of their available resources' implies the importance of an effective budgetary analysis and demands rigorous monitoring of the effects of structural adjustment on policies on protecting children's economic, social and cultural rights. All levels of Government need to ensure that economic and social planning, decision-making and budgetary decisions are made with the best interests of children in mind, including the protection of marginalised and disadvantaged groups of children from the adverse effects of economic policies or financial downturns. (UN CRC General Comment 5)ⁱ

The General Comment 5 of the Committee on the Rights of the Child, which provides in-depth guidance on the 'General Measures of Implementation' required for the full implementation of the CRC,ⁱⁱ envisaged compatibility of national legislation with the CRC, separate ministries dealing with children's issues, governmental and independent coordinating and monitoring bodies, children's rights commissioners, comprehensive data collection, awareness-raising and training and development, child impact analysis and children's budgets, and NGO coalitions on children's issues, and implementation of



If the Indian State has to promote and respect child rights comprehensively, the Central and State governments, district administrations and other layers of governance must work on the basis of a unifying, comprehensive and rights-based national strategy, and plan of action.

i Each of the treaty bodies publishes its interpretation of the provisions of its respective human rights treaty in the form of "general comments" or "general recommendations". These are interpretation of substantive provisions to provide general guidance on the information that should be submitted in State reports relating to specific articles of the treaties.

ii Recognising that the CRC essentially provided an overarching ideological framework and a normative agenda for action by the State Parties, the Committee on the Rights of the Child has been producing general comments on various important topics.

appropriate policies, services and programmes. Many of these measures, albeit nominal and probably superficial, seek visibility of children in society and systems of governance.⁴

If the Indian State has to promote and respect child rights comprehensively, the Central and State governments, district administrations and other layers of governance must work on the basis of a unifying, comprehensive and rights-based national strategy, and plan of action that addresses the most critical issues affecting all children in the jurisdiction of the country. India's journey towards achieving several of the Sustainable Development Goals (SDGs) and targets by 2030 majorly hinge upon the realisation of child rights.

National Policies, Legislation and Action Plans

If expression of commitment to legislation, policy and plans in the interests of children at the international, regional and national levels are any indication, the Government of India has an impressive record. While there has been considerable progress in a range of government actions in the interests of the child, the commitments are not sufficiently translated into the systems, processes and outcomes for children due largely to the insufficient analysis and absence of a strategic focus to guide efforts. As a consequence, the timelines, baseline and endline, financial and other resource implications are not fleshed out meticulously resulting in inadequate investments, including capacity development at various levels and systems for benchmarking progress.

A comprehensive national strategy for addressing the rights of children has not been devised to guide the development and monitoring of time bound plans of action for children. Plans of action have been formulated in response to global, regional or provision of national commitments. The thrust has changed with time. The currently applicable consensus goals do not necessarily incorporate nationally assessed strategic development requirements for long term systems development for promoting and protecting child rights.

There has been continuity in the approach of successive governments to policy-making. They have tended to acknowledge the principles of the CRC in letter but perhaps not fully in spirit, and in the process have persisted in upholding the quantitative rather than qualitative premises in their policies, legislation and programmes. While the National Policy for Children (NPC), 2013,⁵ was framed by the UPA government, the National Plan of Action for Children (NPAC), 2016,⁶ was formulated by the NDA government. While the continuity in translating the policy into plan of action may have been disturbed, at face value, the principle that the obligations of the government towards children are sacrosanct and above any differences in political ideologies and structures was reaffirmed. The relative low key dissemination of the NPAC 2016 and poor take off by the state governments in developing state plans though indicate another story.

Legislation

A spate of child-centric legislation has been the most visible impact of the UNCRC in the last three decades. Influenced by the normative framework proposed by the convention, new laws such as the Prohibition of Child Marriage Act (PCMA), 2006, the Right of Children to Free and Compulsory Education Act, 2009, the Protection of Women from Domestic Violence Act (PWDVA), 2005, and the Commissions for Protection of Child Rights Act (CPCRA), 2005, the Goa Children's (Amendment) Act, 2005, the Protection of Children from Sexual Offences Act, 2012, strengthened the legal framework for children's rights.

More nuances have been incorporated to a few laws. The Juvenile Justice (Care and Protection of Children) Act, 2000, which took into consideration all the International standards prescribed as per the CRC, replaced the Juvenile Justice Act, 1986. It was strengthened through amendments in 2006 and again in 2011.

But some of the amendments may be termed as regressive and in contradiction of stated objects and principles of existing national policy and law. As mentioned in the Introduction, strong public outburst towards the inability of the criminal justice system in preventing crimes against women and girls, and the law enforcement officials in responding to the situation after the “Nirbhaya”⁷ case compelled the political establishment and government to assuage public sentiment by repealing the Juvenile Justice (Care and Protection of Children) Act, 2000 (JJAct 2000), and enforcing the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJAct 2015). In this context, 24x7 news channels and social media have been influential in aggravating public outrage with slanted and sensational reportage to such an extent that a reasoned policy dialogue has become problematic.

Government rejected the recommendation of the Parliamentary Standing Committee on Human Resource Development on the Juvenile Justice (JJ) bill, which recognised that 16-18 years to be an extremely sensitive and critical age group and supported a reformatory and rehabilitative juvenile justice system that could provide them additional protection. It held that subjecting them to different or adult judicial system would go against Articles 14 and 15(3) of the Constitution. The new law has diluted legal protection for children aged 16 to 18 years in contravention of the NPC 2013, which set the upper threshold of childhood at 18, and the non-discriminatory application of juvenile justice rules to all persons under the age of 18 years contained in the CRC. Now they can receive a minimum punishment of seven years in prison, going up to life like adults, for serious offences.

The government incorporated just a few of the suggestions made by the Report of the Committee on Amendments to the Criminal Law, January 23, 2013 (popularly known as the Justice Verma Committee Report)⁸, which recommended amendments to the Criminal Law so as to provide for quicker trial and enhanced punishment for sexual assault against women. Although the growing reports of violence against women and girls necessitated a review of legislation and introduction of other measures, the government responded in knee jerk manner by issuing a new law in response to an unfortunate and exceptionally violent case.

The Child Labour (Prohibition and Regulation) Amendment Act, 2016, banned all child labour below the age of 14 years and regulated employment of labour aged 14 to 18 in non-hazardous sector. But it allows a child below 14 years to help his family or family enterprise, which is not listed amongst hazardous occupations or processes in the Schedule, after school hours or during vacations.

The amendment bypassed the reservations of the Parliamentary Standing Committee, which had cautioned against the insertion of this proviso in view of the difficulties in determining if the child was merely helping the parents or working to supplement the family income, and the detrimental effects of allowing children to work after school.⁹ Indeed, the ambiguous notion of family and family enterprise in Indian socio-economic ethos has hindered the implementation of law. In the context of the national policy thrust on Skill India, the amendment also dilutes the enabling provisions for keeping children out of school and the stated policy position on promoting girls’ education.

Implementation of laws, without adequate consideration of gaps and requirements, commitments and standards, dilutes their intent and purpose. When education was made a fundamental right for children aged 6 to 14 years in 2002, the rights of the 0-6 year olds, which were earlier seen as part of the right to education, were taken away and clubbed with the Directive Principles of State Policy. It diluted the Supreme Court of India’s judgment in *Unni Krishnan, J.P., v. State of Andhra Pradesh and Others* [1993 SCC (1) 645], which recognised right to education for all children up to the age of 14 years as part of the Right to Life.



While there has been considerable progress in a range of government actions in the interests of the child, through law and policy, these commitments are not sufficiently translated into the systems, processes and outcomes for children due largely to the insufficient analysis and absence of a strategic focus to guide efforts

The clause on mandatory reporting in the POCSO Act (Section 19) and the penal provision for non-reporting (Section 21) also obligates the reporting of any case of sexual interaction between children. These are consensual relationships in many instances, and when they result in pregnancy and the parties who do not want to lodge a complaint, the doctors are caught in a dilemma between caregiving and reporting for the judicial course of action.

The death penalty has been introduced for the rape of girls below the age of 12 through the Criminal Law (Amendment) Act, 2018, and the amendment of the POCSO Act in 2019 without due consideration of its detrimental effects. In view of the considerable evidence that the perpetrators of sexual offences are usually close family members, relative or neighbour, they insist that the death penalty may not prevent crimes against children but will certainly deter disclosure and reporting. Families may opt to deny the crime and destroy evidence when faced with hard choices of seeking justice for the young victim or protecting a family member, and the victim may be deprived of psycho-social support and other services essential for recovery. They seek effective enforcement of the law and improving the rate of convictions (currently estimated to be around 30 per cent) through better investigation and reducing pendency of cases.

Policy

India's first National Policy for Children (NPC), 1974, was formulated as a result of the Constitutional commitments to the child way before the CRC. It stated that "Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and bring social justice." The tone and temper, however, for the remaining part, communicated a welfare and service delivery approach.

It viewed children as a 'supreme asset of the nation' and sought to bestow upon them coverage under a comprehensive health programme, provision of nutrition and reduction of deficiency from their diet, non-formal education, and equality of opportunity. They were to receive special mention if they were 'physically challenged' or 'mentally retarded', or belonged to Scheduled Caste and Scheduled Tribe communities. It made no mention of monitoring and accountability but called upon the voluntary sector to partner with the government for delivery of services. Yet, the NPC 1974 was a significant landmark in defining post independence India's obligations to the child and the child's access to a share of its resources.

The next policy was framed four decades later. The NPC 2013 came into effect 21 years after India became a State Party to the CRC. It defined the child as a person below the age of 18, targeted all children within the territory and jurisdiction of the country, and articulated a vision for children and an enabling environment for realising child rights. It committed the government to affirmative legislative, policy and other measures to promote and safeguard the right of all children to live and grow with equity, dignity, security and freedom, especially those marginalised or disadvantaged; to ensure equal opportunities for all children, and to prohibit customs, traditions, cultural or religious practice from violating, restricting or preventing child rights.

The NPC envisaged the formulation of a National Plan of Action for Children by the Ministry of Women and Child Development (MWCD) in consultation with related ministries and departments, and similar plans at the State, district and local levels to galvanise multi-level actions on its provisions. It vested the responsibility for coordination and monitoring the progress of implementation of these plans with the National, State and District Coordination and Action Groups. It further defined the resource allocation, research, documentation and capacity-building obligations and sought its review once in five years.

A mind-set change and requisite capacities are required to integrate the transitions from erstwhile implementation to redirect decisions and actions on the ground to achieve the aspirations of the NPC 2013 across all sectors and levels of governance.

Plans of Action

By and large, the stimulus for the formulation of National Plans of Action for Children (NPAC) have been in response to India's obligations at global and regional fora. The NPAC, 1992 was developed as a response to the commitments made in the World Summit for Children in 1990.

Simultaneously, in 1992, the NPAC for the Girl Child was adopted to coincide with for the SAARC Decade of the Girl Child (1991-2000) which emphasised special obligations towards the survival, development and protection of the girl child. 'The gender specific goals for the Decade of the girl child in India were drawn up based on the World Declaration on the Survival, Protection and Development of Children in the 1990's and the commitments made by Heads of State/countries at Male in 1990 through the Declaration of SAARC declaring the 90's as the Decade of the Girl Child. The Plan outlined... "Rights can be declared and policies can be formulated to express the collective liberal and humanistic concerns, but unless the real life of the girl child in her family and the community is touched by tangible efforts and actions, nothing can be achieved."¹⁰ It stated that the girl child will derive the maximum benefit from the general Plan of Action for Children, and her gender specific needs and requirements will be taken care of by this Plan of Action for the Girl Child.'

The Government of India developed the NPAC, 2005, in response to the global consensus on the goals arrived at the UN Special Session for Children in 2002. This plan contained specific goals, objectives and strategies, including some laudable ones like all children in school by 2005, elimination of child labour from hazardous occupations by 2007, 100 per cent registration of births, deaths, marriages and pregnancies, 100 per cent coverage of urban population with safe drinking water facilities as per norms and standards on a sustainable basis, universal retention, elimination of child marriages by 2010, access to basic sanitation for 100 per cent of the rural population by 2012, and end to sex selection, female foeticide and infanticide. The Plan incorporated for the first time separate sections on the Rights of the Girl Child and Adolescents incorporating some of the unfinished agenda of the NPAC for the SAARC Decade for the Girl Child.

The NPAC, 2005, ticked all the items listed in the emerging child rights discourse. It called upon the Ministries and Departments to demarcate child budget and monitor full expenditure, a systematic assessment of the impact of budgetary allocations and macroeconomic policies on the implementation of children's rights, prioritisation of economic, social and cultural rights of children, especially for the most disadvantaged, the best interests of the child as the hallmark in budgetary decisions and policies at all levels, connect between economic and social policies, disparity reduction between regions and groups of children in terms of provision of social services.

The NPAC, 2016, was developed with the objective of ensuring the nationwide implementation of the NPC 2013 and addressing the child specific goals included in the SDG 2030. The role and responsibilities of the NCAG was spelt out as a key institutional mechanism for taking forward the implementation, coordination, monitoring and assessment of the NPAC. Expected to be ready by 2014, it was placed in the public domain in January 2017.

Among the States, West Bengal had prepared its State Plan of Action for Children even before the NPA was finalised. Bihar and Assam have since developed their Plans of Action for children on the basis of NPC 2013. However, there is no confirmation of any other State Plan of Action for Children being developed. Some states began but did not conclude the drafting process. There has been no evident follow up by the MWCD with state governments on the development of the state and district plans of action.

While the central government encouraged all states and UTs to develop separate State Plans of Action (SPAC) for the first NPA 1992, it was reported that all major states adopted SPACs, however, the exact number was not made known. The next NPAC in 2005 was able to mobilise around 13 states to develop their own state specific plans of action and the NPAC, 2016, has so far resulted in only three

State Plans of Action being finalised and released so far. The central governments follow up with state governments for the development of the SPACs and review processes during the time frame of the first NPA period were more consistent and interactive. The intensity and level of engagement with the states for the subsequent plans has not been the same.

As the effective decentralised implementation of the NPACs depended on the development of state specific plans of action, sub-optimal response of the state governments over the years, evidenced in the absence of preparation of state specific plans of action and need based resourcing of these plans, has contributed to a watered down implementation and the overall achievement of goals and targets was compromised.

Decentralisation does not in any way reduce the direct responsibility of the central government to fulfill its obligations to all children within its jurisdiction. The government has to make sure that the devolved authorities have the necessary financial, human and other resources effectively to discharge responsibilities for the implementation of the commitments to children. The central government should have monitoring mechanisms to ensure that national commitments are respected and applied for all children across different regions within the country without discrimination.

Impediments to Progress

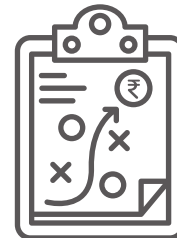
Persistently Narrow Perspective

Strategies, approaches and plans should ideally respond to children's circumstances and issues at a particular point in time. They require credible disaggregated data that could help track changes, identify those children who are most in need of quick resolution to their concerns as well as emerging issues. However, decision-making in India has for long been constrained by non-availability or inadequacy of such data.

The connection between the national policies for children and sectoral policies has always remained tenuous. Children's issues are usually not mentioned in sectoral policies such as those related to mining or housing and habitat, which do impact them. Clearly a review is required as to why the intent of the national policy is not being implemented by all sectoral Ministries.

The preoccupation with prosecution and punishment has overshadowed preventive measures, which need to operate at all levels and notions of justice. The conventional notion of access to justice has expanded over the years from securing legal representation to those who are at risk of being deprived of their right to be heard because of their inability to afford lawyers to a wider set of interventions aimed at promoting legal awareness, rightful conviction, swift justice, rehabilitation, social reintegration and restoration of victims. Monitoring and accountability of law enforcement and justice delivery mechanisms are also part of it.¹¹ The processes and procedures for full rehabilitation need to be simple, comprehensive, efficient and effective, and require collaborative actions, real-time monitoring and periodic reviews.

The contradictory positions sometimes taken by government can baffle the mind. On the one hand a child must be so protected that the age of consent for sexual activity has been raised to 18 years of age, but sex education remains taboo. At the same time, it is deemed acceptable for children above 14 years drop out of school and work and take on adult responsibilities compromising the development



Strategies, approaches and plans should ideally respond to children's circumstances and issues at a particular point in time. However, decision-making in India has for long been constrained by non-availability or inadequacy of such data.

of their full potential, and exposing them to immense risks, or for children between 16-18 years to be treated as adults for heinous crimes, defying the basic premise of having a separate justice administration system for all children based on their developmental status and also in contradiction to international standards.

Although the government should undertake periodic assessments of the enforcement of major children's legislation and accordingly channel financial, administrative and capacity development input, so far mainly Law Institutes and NGOs have taken the lead in conducting such studies and advocating corrective measures.

The inconsistency in articulating the vision and goals for children in successive plans, shifting focus on priority actions gives confusing signals to implementing machinery as well as the public. The basis for the shifts in changing the focus at different points in time has not been shared. For example, various plans of action since 1992 have articulated the need to prioritise eliminating harmful practices including child marriage and developing community based prevention system to address child marriage.

In 2018, the National Human Rights Commission taking cognisance of child marriage as a violation of child rights organised a National Conference on Child Marriage in collaboration with South Asia Initiative to End Violence Against Children (SAIEVAC), involving a broad range of stakeholders. A major recommendation for government action was to develop a uniform Common Minimum Programme at the national level and the State Governments to combat child marriage based on the issues analysed at the conference. Government action on this is awaited.

Similarly the goal on the issue of child labour in different plans of action, vacillated between protection of children in difficult circumstances, eliminating all forms of economic exploitation of children, elimination of children from hazardous occupations by 2007, eliminating all forms of child labour till 14 years and from hazardous occupations till 15-18 years as a priority and developing prevention systems to address child labour and trafficking.

Varying articulation of goals, lack of perspective planning and monitoring of performance for progressive realisation of benchmarked goals and outcomes for children based on local prevalence patterns, no agreed indicators for monitoring of governance factors and process monitoring, have confounded the approach to eliminating child labour. Lessons from successful NGO interventions addressing child labour elimination also need to be integrated in national efforts with government support.

In spite of policy commitments for the same, the creation of an overarching legal, policy and programmatic framework has not been possible. Such a framework would need to respond to the underlying systemic factors as well as to a wider variety of ongoing and emerging issues concerning children as well as establish a comprehensive system of planning, review, research, evaluation and adjustment of all actions on behalf of children. Sectoral focus prevails and all else is sporadic and temporary.



The targets and goalposts keep shifting- but the basis for these shifts is not clear or shared. This inconsistency in articulating the vision and goals for children in successive plans, shifting focus on priority actions gives confusing signals to implementing machinery as well as the public and demonstrates a certain lack of continuity in implementation of priorities towards the goals for children

Lack of Effective Coordinating Mechanisms and Processes

The Ministry of Women and Child Development (MWCD) is the nodal ministry responsible for all matters concerning children. It was upgraded from the Department of Women and Child Development into a full-fledged ministry in 2006 with increased authority and financial and human resources. It has an important role in influencing national policies across sectors, which may impact children.

Coordination between ministries and departments at planning and implementation levels has always been a serious challenge. Successive Five Year Plans advocated for this but could not ensure sufficiently improved coordination and convergence of services. Several efforts by the Government of India to initiate mechanisms for strengthening horizontal and vertical coordination with other sectoral ministries and departments in the interest of children have also not yielded optimal results.

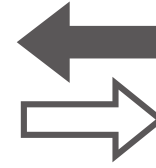
The National Coordinating Mechanism (NCM) constituted through an executive order by the MWCD for monitoring the implementation of the CRC in January 2000 had met only once. It was reconstituted as the National Coordination and Action Group (NCAG) in April 2005 with an extended mandate of monitoring the NPAC 2005 as well for effective monitoring and evaluation at national, state and lower levels for reporting and periodic review of targets. However, between 2005 and 2007, it met only twice. The group was yet again reconstituted in October 2007 but had met only once.

The NPC, 2013, states that all national, state and local government initiatives in all sectors must respect and uphold the principles and provisions of the policy and calls for conscious, convergent and collateral linkages among different sectors and settings, with indicators for tracking progress. The MWCD is responsible for the oversight and coordination of the implementation of the NPC and its Minister is to head the NCAG for Children with members drawn from other ministries. Similar Coordination and Actions Groups were envisaged to monitor progress at the State and District level.

According to the NPAC 2016, the NCAG will be responsible for implementation, monitoring and evaluation of the NPAC; ensuring coordination among Central Government Ministries and Departments, between Central and State Governments and provide strategic guidance and directions to them; coordination between government and civil society; undertake need-based research and documentation on child related issues; highlight any new or emerging areas of concern for children and advise government on developing new strategies and programmes to address the same.

More than 6 years after the NPC, 2013, has come into effect and about 3 years after the adoption of NPAC, 2016, in January 2017, the new NCAG has not been formed.

The Early Childhood Care and Education (ECCE) Policy was formulated later in the same year as the NPC 2013 within the same Ministry, MWCD. However, the policy context of the ECCE policy has no mention of the NPC 2013 though it is the overarching national policy for children aimed at integrating a rights based approach in all sectors and actions for children. The NPC 2013 in the section on Education and Development clearly articulates, "Provide universal and equitable access to quality ECCE for optimal development and active learning capacity of all children below six years of age". In fact, surprisingly, in the section on Coordination and convergence, the ECCE Policy says that the revised NPC 2013, among others, will be 'realigned and re-oriented to the current policy'. This clearly indicates the lack of coordination within the nodal ministry itself, so anticipating coordination in the absence of any overt efforts from other ministries is an expectation not likely to yield results.



Coordination and convergence remains the biggest impediment to realisation of rights of children. Efforts by the Government of India to initiate mechanisms for strengthening horizontal and vertical coordination with other sectoral ministries and departments in the interest of children have not yielded optimal results.

Lack of coordination at the highest level is apparent in the articulation of national goals in three significant national level government documents released in 2017. In the absence of a clarification by government on the same, it left the country in a state of confusion as to which targets are being followed, resourced and monitored by the government.

INFANT MORTALITY GOALS		
NPAC 2016 25/1000 by 2021 or before	NITI Aayog Three Year Agenda 30/1000 by 2019-20	National Health Policy 28/1000 by 2019-20
UNDER-5 MORTALITY GOALS		
NPAC 2016 25/1000 by 2021	NITI Aayog Three Year Agenda 38/1000 by 2019-20	National Health Policy 23/1000 by 2025

The NPC, 2013, entrusted the National Commission for the Protection of Child Rights (NCPCR) and the State Commissions for the Protection of Child Rights (SCPCRs) with the important task of mainstreaming the child rights agenda in the government by ensuring respect for the principles contained in the policy in all sectors at all levels in formulating laws, policies and programmes affecting children. This has proved to be a major challenge especially as the government agencies do not have a clear understanding of the role and functions of these Commissions and a large percentage of members appointed to the Commissions themselves do not have a clear understanding of child rights.

In all three reviews of India's implementation of the CRC, the Committee on the Rights of the Child recommended that government strengthen its national mechanism to coordinate the effective implementation of the programmes for children at the federal level, between the federal and the state levels and between states and also strengthen the capacity building with a view to improving the efficiency of the implementation process and decreasing or eliminating any possibility of discrimination as a result of that process for implementation of the Convention.

A serious rethink is required about the level at which the coordination mechanism should function considering the lack of success of all previous attempts. Should it be at Cabinet Secretary level or the Prime Minister's level remains a subject of deliberation and practical solution finding—but ignoring this important role is no longer an option for the government. It is also important to acknowledge that civil society has a key role to play and should be sufficiently represented in whatever new form this mechanism will take.

Lack of Periodic Reviews to Revisit Strategy, Approaches and Plans

The National Policy for Children, 1974, was revised after almost four decades in 2013. In its combined third and fourth Periodic Reports on the implementation of the CRC, submitted to the Committee on the Rights of the Child in August 2011, GOI stated that the earlier NPC, 1974, is being reviewed, so that it is calibrated with current priorities and emerging needs of children. If there was a review it was totally internal to the Ministry without the involvement of major stakeholders including civil society and the process and outcome of the review was never made public. Neither was it made available to the official drafting committee set up for drafting the new, revised policy. The drafting committee, however, did have civil society representation.

In December 2000, 'India Report to the World Summit for Children' highlighting India's progress on the National Plan of Action 1992, which focused mainly on quantitative targets achieved was released. The end decade report used results from the Sample Registration System (SRS), National Sample Surveys (NSS), Registrar General of India (RGI), National Family Health Surveys (NFHS) and Multiple Indicator Cluster Surveys (MICS) adapted to incorporate some of the main end-decade

goals. In addition, for the review, structured feedback was sought from Central Ministries, State Governments and four regional meetings were held with NGOs, academicians, and children to get feedback on contribution towards the goals and recommendations. However, the decade long effort had not been evaluated to inform future initiatives to be implemented for children.

As the NPA 1992 and the NPAC for the SAARC Decade of the Girl Child were being implemented during the same period, it was expected that the status of the girl child would also be reviewed as part of the NPA, 1992. The DWCD as the nodal department was to coordinate the implementation and review of both the plans of action. However, when the End-decade India Report on the World Summit for Children was prepared by Government for the global reporting, except for gender disaggregated data on U5 mortality and underweight prevalence in below 5 year olds, there was no analysis or data provided on the progress achieved for the girl child based on the specific implementation of the NPAC for the SAARC Decade for the Girl Child. This kind of data and analysis could have been used to inform either future planning or track administrative and monetary provisions or deficits that may require addressing for better outcomes.

The NPAC 2005 stated that Periodic and Annual reviews would be conducted at the national and state levels. While some data on progress on survival, health, nutrition and education became available from the normally scheduled SRS, NSS, NFHS etc., there was no national assessment of its implementation. The proposed mechanisms and systems were either not set up or did not function during the plan period, and there was no analysis of the progress achieved and most importantly, of the reasons why major targets were not achieved and what alternate plans the government is making to achieve these goals. It also stated that the DWCD would regularly publish annual reports on the status of implementation of the NPA and the status of India's children. These never saw the light of day.

While the NPAC, 2016, specifies that "A comprehensive review of the NPAC spearheaded by NCAG, in consultation with all stakeholders, including children, should be conducted once in two years as there is rapid change in all fields, especially information technology, family relationships, peer group etc., which affect the children at present", there is no evidence till date that this is being implemented and monitored by the MWCD. The NPAC 2016 should be coming up for first formal review; however, the NCAG to coordinate its implementation has not been formed to date. The government is silent as to the reasons for delays and or non-action on committed timeframes for planned activities.

Analytic information on the progress for children based on the implementation of successive plans has not been available as there have been no reports regarding the actual impact of planned efforts of the government, the resources made available in relation to the requirements and targets set, the human and technical inputs strengthened, the outcomes achieved for children and the continuing challenges being faced in implementation. This continues to be a major deficit area for informed planning and the translation of policy to outcomes for children.

The NPC 2013 is supposed to be reviewed every five years, as stated in the policy itself. So in 2018 there should have been a review of the NPC 2013 initiated, which has not yet happened and again there is a silence from the government on the issue.

Collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and disparities in the realisation of rights, is an essential part of implementation and should extend over the whole period of childhood, up to the age of 18 years and cover all rights. Data needs to be nationally applicable, yet provide the regional and state distinctions. The aim should be to build up a complete picture of progress towards implementation, with qualitative as well as quantitative studies covering all aspects of the child rights.

Often, even data that should otherwise be easily accessible in the public domain for social research and may be available in the Ministries and departments, has to be sought through a Right to Information (RTI) Act application, which is a tedious process, often resulting in delays and receipt of inadequate information.

Decisions on framing new laws are sometimes made when in reality it is the failure to implement what existed or lack of evaluation of the effectiveness or lacunae in the law. New legislation may not always improve enforcement. Making existing mechanisms functional is far more critical in ensuring administration of justice for children. Most importantly there is need for mechanisms at central and state levels for in-depth review of the different aspects of the law administration process are regularly carried out, administrative solutions and allocation of additional resources along with regular monitoring undertaken to ensure justice administration for children.

As emphasised in the NPC 2013, a continuous process of child impact assessment (predicting the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights) and child impact evaluation (evaluating the actual impact of implementation) needs to be built into government at all levels in the development of policy. This will further the visible integration of children in policy-making and sensitivity to their rights across government departments and ministries.

Monitoring and evaluation requires the development of indicators related to all rights. Neither monitoring indicators for the CRC nor the NPAC were developed to strengthen national information systems. No systematic plan was formulated for obtaining the required data. For tracking national progress on aspects related to children and meeting commitments, this should be done sooner rather than later.

The Ministry of Statistics and Implementation in collaboration with UNICEF conducted a data gap analysis in 2014, which reportedly incorporated several CRC related indicators. But this study has not been finalised and placed in the public domain. The 78th round of NSSO plans to integrate key SDG indicators to facilitate comprehensive reporting. However, there is no word on when and if an initiative is to be undertaken to enable data collection to keep a comprehensive track of progress for children.

The story on qualitative indicators and available information causes even more concern and requires more rigorous attention, resources and engagement of academic and research agencies. The academia needs to integrate childhood and rights studies in their mainstream work so that evidence from the country is available for decision makers. This has been neglected and no country can gauge its progress in the quality of life of its children without investing in research and evaluating the impact of its programmes. This needs to be an internally driven exercise aimed at doing the best for our children and not considered as an external reporting requirement, which is demanding.

Inadequate Funding

The National Policy for Children (NPC), 2013, made specific commitments regarding resources for mainstreaming the policy objectives throughout the country to achieve the goals for India's children. In addition to the allocation of required financial, material and human resources, and their efficient and effective use, with transparency and accountability, the NPC 2013 referred to child budgeting to track allocation and utilisation of resources and their impact on outcomes for children with regard to budgets and expenditures on children by all related Ministries and Departments.

Earlier, the NPAC 2005 committed to the allocation of the required financial, material, technical and human resources from the Central and State governments to ensure its full implementation.¹²

Investment in children, implicit in the budgetary allocations and expenditure, indicates the State's performance towards realising children's rights. The NPAC, 2016, had recommended at least 5 per cent of the Union Budget as expenditure on schemes and programmes directly related to children. Budget for children analysis for the last 15 years by the HAQ: Centre for Child Rights shows that children have never received more than 5 per cent of the total Union Budget allocation. Indeed, there has been a decrease over the years in the share of budget for children. It declined from 4.8 per cent in 2008-2009 to 3.29 per cent in 2019-2020.¹³

Table 1 below shows that the share of all sectors, except child protection, has declined over the years. This may be attributed to the 14th Finance Commission recommendations, which led to the transfer of responsibility for allocation for children to the state governments.

TABLE 1: SECTORAL SHARE IN UNION BUDGET

Year	Health BE	Development BE	Education BE	Protection BE	BfC Share
2012-2013	0.18	1.10	3.44	0.04	4.76
2013-2014	0.16	1.10	3.34	0.03	4.64
2014-2015	0.16	1.06	3.26	0.04	4.52
2015-2016	0.13	0.51	2.57	0.05	3.26
2016-2017	0.12	0.77	2.40	0.03	3.32
2017-2018	0.12	0.80	2.34	0.05	3.32
2018-2019	0.13	0.82	2.25	0.05	3.24
2019-2020	0.12	0.85	2.19	0.07	3.29

Source: HAQ: Centre for Child Rights, Children in the 'Trillion Dollar Economy' - Budget for Children 2019-20

Public spending on education has always been inadequate. It has never matched the accelerating demand and its share has remained far below the 6 per cent of GDP, as suggested by the Kothari Commission in 1965. The National Health Policy 2017, has proposed a time bound increase in public health expenditure from roughly 1 per cent to 2.5 per cent.

The near stagnant trend in allocations in most sectors needs to be viewed in conjunction with India's consistently sub-par performance on several child specific outcome indicators like 35.7 per cent children under 5 years being underweight, 38.4 per cent children under age 5 years who are stunted, 58.4 per cent children aged 6-59 months who are anaemic, sex- ratio at birth being 898, proportion of sexual crime against girl children to total crime against children during the calendar year being 34.8 per cent, proportion of trafficking of girl children to total children trafficked during the calendar year being 90.3 per cent, the proportion of crimes committed against children during the year being 22.1, number of missing children being 60,443.¹⁴

Child budget analysis in recent years demonstrates clearly that the allocations are inadequate for realising the stated sectoral goals or addressing the disparities and inequities that push different groups of children to the margins.

In three successive reviews between 2000 and 2014 of India's reports on the implementation of the CRC, the Committee on the Rights of the Child has made similar recommendations to the government¹⁵ that are a reflection of persistent resource deficit.

- To form a system that enables regular collection, assessment and dissemination of information regarding the impact of budgetary allocations on the implementation of child rights;
- Increase the proportion of the budget allocated to the realisation of children's rights to the "maximum extent ... of available resources" to ensure the provision of appropriate human resources and to guarantee that the implementation of policies relating to social services provided to children remain a priority';
- Substantially increase the budget allocations to all social sectors, in particular education, health and child protection, including earmarked resources for children at the federal and state levels;
- Develop a budgeting process with a child rights perspective, which specifies clear allocations for children in the relevant sectors and agencies, including specific indicators and a tracking system;
- Evolve a mechanisms to monitor and evaluate the adequacy, efficacy and equitability of the distribution of resources allocated for children at the federal and state levels.

While budget for children has been institutionalised even though it needs strengthening at central and state levels, mechanisms are yet to evolve for real-time monitoring of the adequacy, efficacy and equitability of the distribution of allocated resources at various levels and the impact of these on realising child rights.

Weak Redress in Case of Rights Violations

The notion of entitlements and rights entails, in addition to a substantive claim, the recourse to a judicial, administrative, legislative or other authority in the event that a right is violated. The government is expected to ensure easily accessible and effective, child-sensitive procedures and mechanisms to children and their representatives, which can provide adequate reparation or compensation for the harm they may have suffered. The NPC, 2013, advocates strengthening of legislative, administrative and institutional redressal mechanisms at the national and state level for the protection of child rights as well as development of effective and accessible grievance redressal mechanisms at the programme level for redressal of local grievances.

The government is obliged to bring to justice those responsible for the violation, including its agencies and officials, and offer child victims the possibilities of recovery and rehabilitation (Art. 39 CRC); adopting measures to protect the child victims in criminal proceedings and taking measures to prevent the recurrence of violations. Agencies with oversight powers relevant to children's rights, i.e., the National Human Rights Commission, the National Commission for the Protection of Child Rights (NCPCR) and the State Commissions for the Protection of Child Rights (SCPCRs) play a role in addressing complaints on violations of child rights and provision of remedies. India has SCPCRs in 35 States and Union Territories.

Major programmes for delivering public services for children and care institutions are expected to have in-built mechanisms for local grievance redressal. However, information on the functioning and effectiveness of such mechanisms in providing redress to children is not available.

"The absence of an effective system to ensure accountability and mechanisms to redress grievances within government departments increases the load on Commissions. It is a challenging task for the NCPCR to monitor the implementation of various laws, programmes and schemes. This is especially so with India having the largest network of State run public institutions in the world."¹⁶

Dr. Shantha Sinha, Former Chairperson of NCPCR

There are some mechanisms for complaints redressal in place but their reach and efficacy are questionable. The annual reports of NCPCR and SCPCRs provide the numbers of complaints received and redressed but lack analysis of the most critical issues related to children emerging from the process. Childline, the national helpline for children, analyses annually the complaints or calls it receives but fails to provide information on the action taken as the complaints are forwarded to the relevant government machinery.

While independent institutions monitoring implementation of policy and laws and violations of child rights in the form of NCPCR and 35 SCPCRs have been established, Principles relating to the Status of National Institutions (The Paris Principles), Adopted by General Assembly resolution 48/134 of 20 December 1993 and CRC Committee's General Comment No. 2 on national human rights institutions stand compromised vis-à-vis their functioning because of the process followed for selection of the chairpersons and members; their capacities to function as rights protectors, inadequacy of financial and human resources at the disposal of the Commissions; and, lack of autonomy to function as an independent body under all circumstances and execute their mandate as independent bodies.

A 2018 review of compliance of the Commissions with international standards has revealed, "The overwhelming control of the executive over the appointment process, finances, and hiring of staff, erodes the core principle of independence of a human rights institution. By prescribing a very weak

structure, the CPCR Act, has given the executive ample opportunities to control the working of the CPCRs. The political nature of appointments in most States also undermines the commitment to child rights as the SCPCRs comprising such persons hesitate to highlight issues that embarrass the ruling party. Such provisions of the CPCR Act undermine the nature and objective of a human rights institution for children and thus inevitably impact their efficacy¹⁷.

While the Commissions have been given certain powers and authority to fulfill their mandate, it is evident that the members often do not fully comprehend these powers or know how to use them for carrying out their mandated responsibilities.

The NCPCR and SCPCRs have also been entrusted with the responsibility of monitoring of child specific laws, specifically, The Right to Education Act, 2009 and Protection of Children from Sexual Offences Act, 2012 and the Juvenile Justice Act, 2015. However, the absence of domain expertise, availability of adequate financial, technical and professional resources required to perform their functions need to be factored in the design of future capacity building efforts to sustain this monitoring role effectively.

Capacity Deficit

The relationship between all important national policies and child rights is critical. The MWCD as the nodal ministry has an important role in ensuring that the principles set out in the NPC are mainstreamed in all sectors and capacities are created for this and for conducting child impact assessments prior to sectoral policy and law formulation and development of programmes and plans of action. This remains an area for development and institutionalising before major policies, laws and programmes are introduced.

The MWCD and the DWCDs in the states have for long lacked the status, authority and convening capacity vis-a-vis line ministries, in particular finance. They have not been able to make a robust case for increased allocation of resources and the level of coordination required to enable the realisation of national goals and targets for children and their rights.

Persisting inability of the MWCD and lack of effectiveness of coordinating mechanisms set up have been attributed to the deficit of human, technical and financial resources. Several stakeholders in the last two Five Year Plan reviews had recommended the professionalisation of the MWCD through the establishment of a technical division with a range of experts from relevant disciplines, which could also serve as a repository of technical capacities and institutional memory. It could raise the profile of MWCD vis-à-vis other sectoral Ministries, advice bureaucrats regularly, and professionalise the work of the ministry. This was clearly articulated in the 12th Five Year Plan document, “a technical Directorate for Child Development and Protection is needed for sustained technical support,” however, has not been acted upon. This idea gains relevance with the Planning Commission with its advisory role being dismantled and NITI Aayog being constituted with a different profile.

Knowledge of the special children’s legislation and capacities of the law enforcement infrastructure and the judiciary need constant reinforcement to strengthen understanding, interpretation and application of the law and develop a sensitivity to child rights together with creating the capacity for strengthening prosecution of offenders. Capacity building initiatives for judges, police and others, have not necessarily led to a greater efficiency or in developing the required attitude change in all stages of the justice administration process. There is a lack of specialised judges, prosecutors, lawyers and other personnel as well as sufficient resources to provide specialised training. Poor quality of legal aid combined with lack of awareness about legal aid services, are also issues of concern.

Most often, while framing and tabling new laws, a financial memorandum to ensure commitment of funds for appropriate structures, mechanisms, staff and other resources, which are necessary for effective implementation is not tabled leading to structural and capacity deficits for implementation of the law. There is a lack of coherence in the actions of government in not matching the urgency of enacting the law without commensurate investment in ensuring that structures are in place and

capacities and monitoring systems are created to ensure effective enforcement to protect the rights of children.

It is therefore not surprising that poor implementation of laws, reflected in the low rate of prosecution and conviction under most laws relating to children, has been a constant refrain. The conviction rate for all crimes against children was only 30.7 per cent and pendency of cases as high as 89.6 per cent according to the Crime in India, 2016.

Justice Lokur in a recent national consultation on POCSO Act emphasised the need for specialised capacities in the administration of justice for children, “Special courts must be special. We have cases where the judges are in a special court for half the day and doing some other work for the other half. I think specialisation is necessary. We need not just child friendly courts, but child-friendly judges and child-friendly procedures.”¹⁸

Strengthening institutional capacities to match their role and functions and reaching out to the policy making machinery in the country, including the legislature and the executive (line ministries), civil society and the academic community is critical for addressing institutional capacity constraints in translating policies into desired outcomes for children.

Here the Lal Bahadur Shastri Academy of Administration (LBSNAA) and public policy institutes with expertise on policy effectiveness analysis, together with child rights experts, need to play a part in strengthening the capacities of decision makers.

Lack of Accountability

It is evident that professed ‘national will’ reflected in the NPACs in the last three decades did not permeate sufficiently to different sectors and different levels of the government to create a momentum and necessary conditions for a systemic response to child rights issues. This resulted in their not being a desired impetus, and also lack of political will backed with the required resources to match the commitments so as to reflect commensurate actions of the state for achieving the stated goals and objectives in the successive NPACs.

The importance given to children’s issues and the extent to which the Parliamentarians are willing to convince the government into making difficult but correct decisions in favour of child rights is reflected in the fact that in several important legislations, including the CPCRA Act in 2005, the Juvenile Justice Act in 2015, the Child Labour (Prohibition and Regulation) Amendment Act and in 2016, critical and well researched recommendations of the Parliamentary Standing Committees set up to review the Bills were not accepted by the government resulting in compromised provisions in the laws and the parliamentarians accepted easily the governments arguments presented by the concerned Minister.

There is a need to build a system of accountability at all levels for implementation and governance deficits. Transparency is required in recording and putting in the public domain the reasons for shifts from committed actions on behalf of children. Without introspection and formal review, no one will ever know. But whatever the case, we need to do things differently if we have to get better results for our children. We need to get serious in our efforts and develop a professional and management oriented approach to ensuring desired outcomes for children.

Lackadaisical Engagement with Civil Society

Implementation is an obligation for the government but needs to engage all sectors of society, including children themselves. The responsibilities to respect and ensure the rights of children extend in practice beyond the Government and Government-controlled services and institutions to include children, parents and wider families, other adults, and non-State services and organisations.

In 2014, the UNCRC Committee noted the governments' coordination with NGOs in various areas of service delivery and expressed concern that the government appears to delegate the provision of services for children to NGOs contracted by the respective states, but does not monitor and evaluate the quality of the services delivered. It called attention to the need for government to systematically involve communities and civil society, including non-governmental and children's organisations, in planning, implementing, monitoring and evaluating State-supported policies, plans and programmes relating to children's rights. It also recommended that measures to be taken to effectively monitor the quality and coverage of services provided to children by NGOs, incorporating an oversight function.¹⁹

There has been a period from 2000 to 2013 when open spaces for civil society participation were formally established. The National Advisory Council (NAC), appointed by the UPA government had a role to help prepare social legislation for the government. The ruling party introduced the draft written by NAC in the parliament. After a series of debates in parliament, the legislation was passed and implemented nationwide. The NAC was responsible for the drafting of several key bills passed by both UPA governments, including the Right to Information Act, 2005, Right to Free and Compulsory Education Act, 2009, and The National Food Security, 2013 Act.

An officially initiated consultative process was also put in place for the development of the 12th Plan through the Wada Na Todo Abhiyan (WDTA) and facilitated decentralised, nationwide inputs to be fed to the Planning Commission prior to the formulation of the 12th Plan.

Mobilisation of civil society inputs had taken place around the formulation of NPAC 2005, Right to Education Act, POCSO Act, among other issues. However presently, civil society space is being marginalised in the public policy making sphere. Issues of representation and legitimacy of civil society as representatives of the public and therefore their participation in policymaking are being raised. A range of measures by the government in recent years, including the imposition of limitations on receipt of funding from foreign donors and increasing non-involvement in the development planning and monitoring processes have elicited strong reactions from several civil society organisations. The shrinking space for collaboration is detrimental to the wider objective of realising children's rights, as civil society is increasingly constrained in providing feedback on the availability and quality of public services from the grassroots and demanding accountability of duty bearers in the best interest of children. The professional knowledge and skills together with the ground experience and lessons are invaluable for government to continuously learn from and strengthen the systemic issues to enrich their programmes.

There is consensus about the 'legitimacy' of civil society's participation in policymaking using advocacy strategies of persuasion, education and awareness building within 'sanctioned and invited spaces'. However, civil society needs to rethink its strategy on how it can evolve from fragmented, sectoral focused voices on behalf of children to a full-fledged child rights movement coming as a unified strong and compelling voice on protection of children's rights and justice for children.

The question of capacity of Civil Society Organisations (CSOs) and NGOs assumes importance. Networks and mobilisation capacity is equally important. Capacities to input into policy process and policy or law drafts, of evidence based knowledge, effective use of the information, and communication strategies are other areas critical to the credibility of civil society engagement at all levels. How can civil society enhance its collective capacities in a more comprehensive way? What will be the system for their own accountability? There is a need to reflect on the role being played by civil society as defenders of child rights and identify how to generate the transformations necessary for effective progress for children, both within civil society and in the government. How can civil society ensure that 'participation' is not just cosmetic, merely to legitimise governmental processes?

There is a need for a continuous and constructive civil society-government interface for building quality and voices of practitioners and experts into policy, implementation and evaluation processes in the best interests of children. Government needs to facilitate this and both civil society and government need to introspect as to how this can be sustained meaningfully.

Conclusion

Several issues have plagued the emergence of a robust child rights national agenda in India. With the CRC completing three decades and the looming challenge of achieving the SDGs, the time is ripe for revisiting collectively the progress in terms of outcomes for children, measures and practices that have been effective, and impediments that must be dealt with purpose and urgency.

India has made progress over the years on several fronts for children but the pace has been excruciatingly slow and internal disparities and growing inequities have resulted in inconsistent outcomes for children. Plans of action for children may reflect compliance with international, regional and national commitments but consistently inadequate resource allocations question their sincerity. The Government may have enlarged the legal framework for child protection but the entire gamut of rights in the CRC is still legally insecure. Past efforts at engineering improved coordination have not yielded desired results. Lack of comprehensive monitoring and evaluation of the measures and outcomes for children as well as qualitative analysis of achievements and challenges continue to erode and undermine ongoing efforts.

The list of what needs to be done is long and oft repeated. A comprehensive review of all legislation and policy is required to address enforcement challenges and to create the basis for legal reforms, and effective, responsive and child-sensitive justice delivery mechanisms and structures. The quantitative and qualitative information gaps need to be filled with quality research and information systems designed to capture emerging issues to facilitate evidence based planning, public action and monitoring.

A constructive critique of government programmes and initiatives is necessary for, as is contributing to integrating improvements and sustaining them. An environment characterised by open dialogue and discourse is the premise for a collaborative exploration towards developing a better understanding, collaboration and solutions for accelerating progress for children. Civil society, academia, researchers and professional groups need to have a conducive environment and support for fulfilling their roles. The government's role is to facilitate such an environment. The involvement of these stakeholders in the process of implementation and monitoring is vital.

There is no scope for being complacent that the efforts are commensurate with the commitments made. Promises need to be matched with required resources, professionalism and concerted efforts where reviews, evaluation and re-alignment of initiatives are carried out as a continuous cycle with the best interests of children in mind.

The most critical challenge is to position the children's agenda at the highest level of policymaking if the Constitutional, national policy and international treaty obligations are to be realised. Government needs to seriously reflect on the adequacy of its approach and actions related to children over time, acknowledge the ambivalence and inconsistencies, and consider the ways and means of delivering on the commitments to children in India. Apart from financing and management of programmes for children, the procedural, governance, accountability, capacity and quality aspects have to be addressed otherwise between the written word, professed intent and spirit of commitments and the gap in actual implementation, the childhood of millions of children will continue to be compromised.



An environment characterised by open dialogue and discourse is the premise for a collaborative exploration towards developing a better understanding, collaboration and solutions for accelerating progress for children. The government's role is to facilitate such an environment.

Endnotes

- 1 Wiener, Myron. 1990. *The Child and the State in India-Child Labor and Education Policy in Comparative Perspective*. OUP. India
- 2 Balakrishnan, Vijayalakshmi. 2011. *Growing Up and Away-Narratives of Indian Childhoods Memory, History, Identity*. OUP. India
- 3 Ganguly Thukral, Enakshi (Ed). 2011. *Every Right for Every Child; Children and Governance*. Routledge. India
- 4 General Comment No.5 . 2003. General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6). page 3 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbol-no=CRC%2fGC%2f2003%2f5&Lang=en Last accessed on 12 November 2019
- 5 National Policy for Children. 2013 .Ministry of Women and Child Development. Government of India
- 6 National Plan of Action for Children. 2016. Ministry of Women and Child Development. Government of India
- 7 The gruesome rape and fatal assault of a young woman by six in the bus, including a juvenile, in December 2012 generated widespread national and international condemnation and led to public protests against the government for failing to provide adequate security for women. As the law prohibits the revelation of the name of a rape victim, she become widely known as Nirbhaya or the “fearless” one.
- 8 Justice J.S Verma, Justice Leila Seth and Gopal Subramaniam. January 23, 2013. Report of the Committee on Amendments to Criminal Law, 2013. <https://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf> Last accessed on 12 November 2019
- 9 Standing Committee on Labour (2013-2014) Fifteenth Lok Sabha Ministry of Labour And Employment The Child Labour (Prohibition And Regulation) Amendment Bill, 2012. Fortieth Report
- 10 National Plan of Action for the SAARC Decade of the Girl Child (1991-2000). 1992. Department of Women and Child Development. Ministry of Human Resource Development. Government of India . page 3
- 11 Towards Improving Access to Justice and Restorative Care for Child Victims of Sexual Abuse in Delhi-A Report of State-Level Multi-Stakeholder Dialogue). Feb 2019. HAQ Centre for Child Rights supported by Human Dignity Foundation.
- 12 National Plan of Action for Children 2005. Department of Women and Child Development. Ministry of Human Resource Development. page 46
- 13 HAQ: Centre for Child Rights. 2019. Children in the ‘Trillion Dollar Economy’, Budget for Children 2019-2020 <http://haqcrc.org/wp-content/uploads/2019/07/haq-budget-for-children-2019-20.pdf> Last accessed on 12 November 2019
- 14 Data from the Sustainable Development Goals, National Indicator Framework, Baseline Report (Provisional) 2015-16. Government of India. Ministry of Statistics and Programme Implementation, Central Statistical Office
- 15 UN Committee on the Rights of the Child. Concluding Observations to India’s State Party Reports on the Implementation of the CRC- 2000, 2004, 2014
- 16 Sinha, Shantha. 2018. Reflections About the National Commission for the Protection of Child Rights, in *Essays on Commissions for Protection of Child Rights*. Centre for Child and the Law, National Law School of India University (CCL-NLSIU). Bangalore
- 17 Raha, Swagata.2018. Assessing Compliance of the Commissions for Protection of Child Rights Act, 2005 with International Standards, in *Essays on Commissions For Protection Of Child Rights In India*. Centre for Child and the Law. National Law School of India University (CCL-NLSIU). Bangalore.
- 18 Lokur B, Madan. 2019. POCSO National Consultation Report. Sponsored by Tata Trust, UNICEF, Human Dignity Foundation.
- 19 Committee on the Rights of the Child. 2014. Concluding Observations to India’s State Party Reports on the Implementation of the CRC.

3

CHILD HEALTH

ABHIJIT DAS

Photo: Tanitta





Introduction

There have been some remarkable changes in the health scenario in the country since Independence and these are reflected in the field of children's health as well. The average person born in India in the 1950's was expected to live less than 40 years and now it has increased to nearly 70 years. Children's mortality was very high with more than 30 out every 200 babies dying before their first birthday. Now this mortality has reduced to about 30 children out of every 1000 children not celebrating their first birthday. Similarly, the under-five mortality rate has reduced from a high 250 deaths for every 1000 live birth or one in every four children to about 4 deaths for every 100 live births. This indicates that while earlier a large number of children died between the age of 1 and 5 years, now this has significantly reduced and most of the children who survive the first year, survive till the fifth year as well. At the same time the number of children being born to a mother (or a couple) has also come down from a situation where a mother would on an average have 6 children at the time of Independence to 2 children now. Clearly fewer children are being born to couples and many more of them are surviving. And this increased survival of children has contributed to the overall reduction in death rates, the increase in life expectancy and the overall well-being of the entire population.

In the years since Independence there have been dramatic changes in the socio-economic and policy domain in India and these have also influenced children health. While mortality among children has reduced, the situation is not without any concerns.



Under-one Mortality

1950
30
out of every
200

Now
30
out of every
1000



Under-five Mortality

1950
250
for every
1000

Now
4
for every
100

The overall changes in child health while being impressive, lag behind our immediate neighbours Nepal and Bangladesh. Both Nepal and Bangladesh are not only economically poorer, but also lack adequate health infrastructure and have gone through far more political uncertainties in this period. Childhood malnutrition continues to be a persistent problem in India despite rising economic prosperity. Also, India is a vast and diverse country, and the average figures mask huge disparities between regions and population groups. In many places in our country, indicators related to child mortality and malnutrition rival those in countries of sub-Saharan Africa.

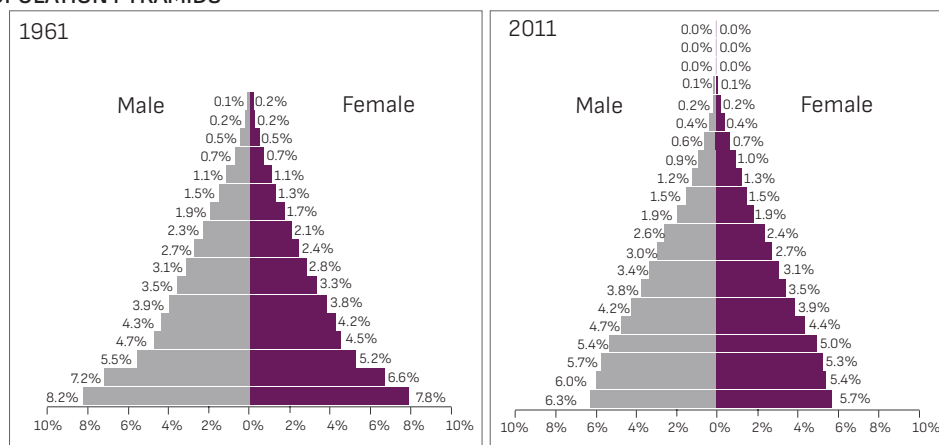
But India is also known as a country of contradictions and this has been highlighted in the domain on nutrition in recent years. With economic liberalisation and a rising urban middle-class, there is a rising trend of childhood obesity which is now a common sight at least in urban areas and among the more affluent social groups. Changes in diet toward more packaged food and technology development and rising economic aspirations have led to a situation where children eat processed high-calorie food and spend much less time in physical activities than before. It is not surprising therefore to learn that nearly one in five children in India is either obese or overweight.

In the early years of independence, the small-pox vaccination programme was the most visible manifestation of the policy interest in children's health and this was later replaced by the polio eradication programme of recent times. Supported through and part of global initiatives, the government of India has adopted many interventions to improve child health and the results have been mixed as indicated earlier. The immunisation rates are still far from being universal and neonatal mortality or death of an infant during the first month, continues to be high despite policy interest of many years. To rephrase an old English saying it would not be out of place to say that while a 'pretty' lot has been achieved the 'undone' remains vast. This chapter will explore some of these complexities through a broad overview of the current status of children's health, its diversities, the changing dynamics and the evolving policy priorities. Using a 'social-determinants' of health approach the chapter will identify contemporary concerns from a social justice and equity perspective.

Children – A Changing Demographic

From the time of birth to the age 18 years is a time for growth and maturity. It is also a period of vulnerability which needs understanding and care. Since Independence there have been many changes taking place within this age-group of the population. In many ways the overall definition itself has undergone changes from a situation where childhood was earlier considered till 12 years but now has been extended to 18 years. This can be seen with reference to the discipline of Paediatrics in medicine which earlier restricted itself to this age. The Indian Association of Paediatrics adopted the Policy on Age of Children for Paediatric Care in 1999 and increased the age of patients under their care to 18 years.¹

FIGURE 1 POPULATION PYRAMIDS



Population Pyramid in India 1961 and 2011

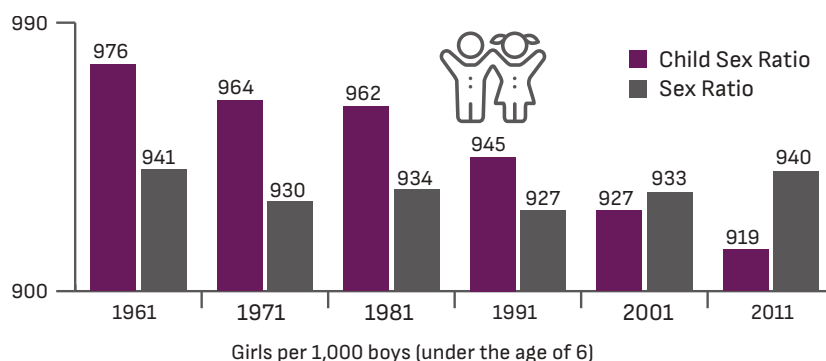
Source: Census of India

Another significant change has been in the overall proportion of children in the population. Two factors have influenced this change. Women now have far fewer children than they had earlier, and many more children are surviving. This means that in addition to the overall increase in life expectancy of the population as a whole, the proportion and composition of children in the entire population is also changing.

This age and sex-wise distribution of population is visualised as the population pyramid and the 'classical' population pyramid as a large base which quickly tapers. Over the years the increasing survival and reduced fertility rates mean that the base comprising of the youngest children is not so broad and the tapering is also reducing as more children survive. Since India's population growth rate has been reducing over the last thirty years the lowest portion of the Indian population pyramid as becoming more columnar as demonstrated in the Figure 1. What it means is that the population now includes many more adolescents than earlier, and adolescents too are children. In terms of health and healthcare, this brings in a completely different set of priorities on newer issues like sexual maturity and reproduction which, in the health care service domain, are still not fully appreciated. Side by side the social requirements of childhood care need to shift from a relatively unqualified concern for protection to understanding and recognising and promoting autonomy in children. To do this within the overall framework of child rights also means to understand how the existing framework of social norms promotes or hinders such autonomy – subject examined in some detail in the Chapter 6 on Child Participation (by Rita Panicker).

Any discussion on demographics of children is incomplete without a discussion of the sex composition of the child population or child sex ratio. In the last 30 years, the decline of girl children in the population has emerged as an area of concern and it highlights widespread gender disparity and son preference in society (see Figure 2 below). While son-preference has been an age old phenomenon, demographers have opined the sharp decline in population brought through the promotion of population control and family planning programmes has led to this undesirable phenomenon.

FIGURE 2 DECLINE IN CHILD SEX RATIO



Source: Census of India

Child Mortality and Survival

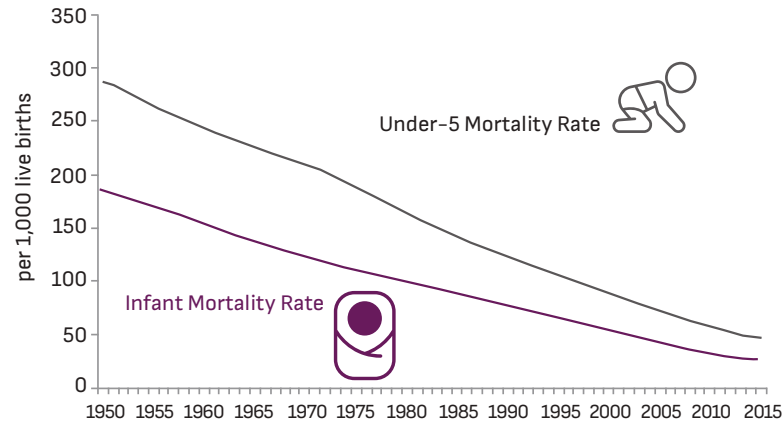
Concern around children's mortality is usually limited to three age groups. The one which is most commonly mentioned is the Infant Mortality Rate or the number of children who die in the first year of their lives as a ratio of a one thousand live births. Another metric of concern is the Under-5 Mortality rate which is concerned with the number of children dying before 5 years for the same number of live births and the third metric is neo-natal mortality of deaths of children in the first month. All 3 indicators use the same denominator of a thousand live births. Mention has already been made of the large reductions in the rate of infant mortality



In the 25 years between 1990 and 2015 the annual rate of decline of Under-5 mortality in India was 3.9%, while in Nepal and Bangladesh it was 5.5% and 5.4% respectively.

(IMR) and of an even greater reduction in the Under-5 mortality. The higher rate of decline in under five mortality indicates that fewer children are dying of conditions like diarrhoea, pneumonia or meningitis and of vaccine preventable diseases like measles or diphtheria. Figure 3 illustrates this decline in these two indices between 1950 and 2015.

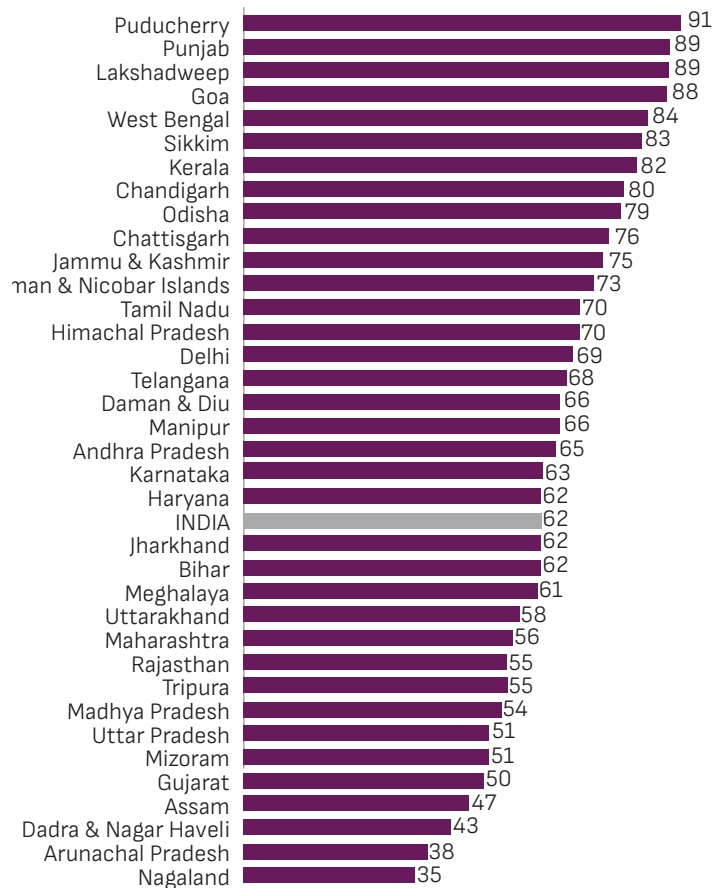
FIGURE 3 DECLINE IN UNDER FIVE AND INFANT MORTALITY RATES



Source: <https://knoema.com/atlas/India/topics/Demographics/Mortality/Infant-mortality-rate> and <https://knoema.com/atlas/India/topics/Demographics/Mortality/Under-5-mortality-rate>

However even with very significant declines in the Infant Mortality Rate (IMR), India was unable to achieve its MDG target of 30 infant deaths for every one thousand live birth by 2015. The IMR in 2015 was 37 but it is continuing to decline as it came down further to 34 by 2016 and to 33 in 2017. But what needs to be considered is that India is a vast country and the overall IMR of 33 includes within it multiple realities. It includes a high 47 for Madhya Pradesh and 44 for Assam and a low 10 for Kerala, and an even lower 7 for Nagaland (Figure 4).²

FIGURE 4 IMR IN DIFFERENT STATES



Source: NFHS-4

Table 1 highlights these diversities even further and looks at diversities within the state and population groups. While the data is drawn from diverse sources the comparisons provided in the last column are based on data from the same data set. The differences are startling. For the same state the difference in mortality between the rural-female infant and the urban-male infant is between one and half times to two times more magnified by differences in gender and rural urban location. When differentials between districts are concerned it is high in the comparably more developed states of Kerala and Maharashtra indicated that the districts with higher rates are probably geographically more isolated and socially more marginalised. It also shows how similar differences determine the health outcomes of children from different backgrounds in India. In India the different axes of social disadvantage include issues like caste, tribal background, whether one is living in rural or urban settings, in settled colonies or slums, is from a minority community and similar issues. These are further compounded by the access to health system which could include presence of providers, facilities, supplies and quality of services provided.

TABLE 1: COMPARISON OF INFANT MORTALITY RATES

State	IMR ¹	UrbanM ²	Rural F ³	Lowest District ⁴	Highest District	Gender Diff F:M ⁵	District Diff H:L ⁶
Assam	47	24	50	442	762	2.08	1.73
Karnataka	28	22	32	NA	NA	1.45	-
Kerala	12	10	15	2.693	17.073	1.50	6.35
Maharashtra	21	12	28	134	754	2.33	5.77
MP	50	34	52	402	932	1.53	2.33
Rajasthan	43	26	52	362	762	2.00	2.11
UP	46	30	49	362	1032	1.63	2.86

(Table computed by the Author drawing upon data from different sources as indicated below)

1 Data from SRS 2015

2 Data AHS 2010

3 Data for year 2008 available from http://www.ecostat.kerala.gov.in/docs/pdf/reports/vs/trend_5.pdf

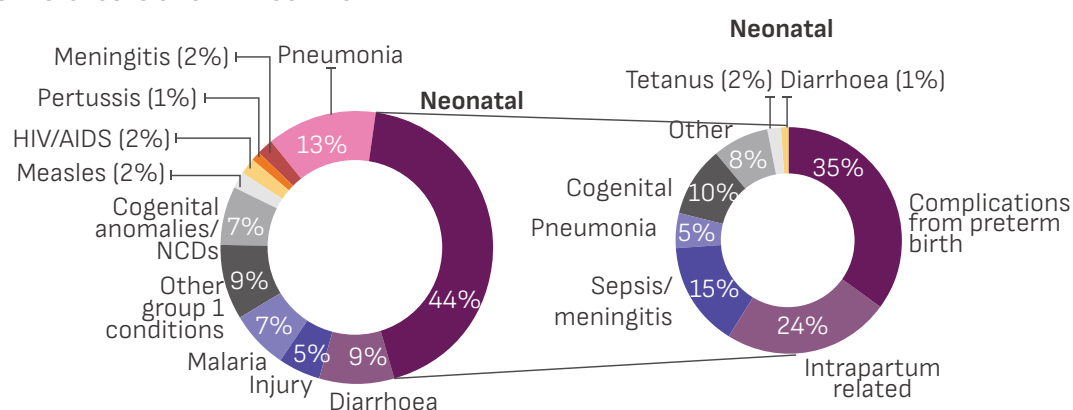
4 Data for year 2008 published in Maharashtra Human Development Report 2012 available at https://mahades.maharashtra.gov.in/files/publication/mhdr_2012.pdf

5 Ratio between the IMR of Rural Females and Urban Males

6 Ratio between the IMR in the districts with highest and lowest IMR

The Social Determinants of Health framework introduced by WHO through its Commission on Social Determinants in Health report 'Closing the Gap in a Generation', (2008) provides a useful analytic tool to understand and address these differences.³ The report affirms that the difference in opportunities available to people living in different parts of the world are related to the 'social disadvantage' that they face and such differences are unfair and should not happen. The lower the person is on the social gradient the worse their health. Social injustice, the report says "is killing people on a grand scale". The World Development Report of 2006 on the theme of Equity makes a similar point comparing the differences in life expectation between a white child from a wealthy background and a black child from a poor rural background in South Africa.

FIGURE 5 CAUSES OF CHILDHOOD MORTALITY



Source: NFHS-4

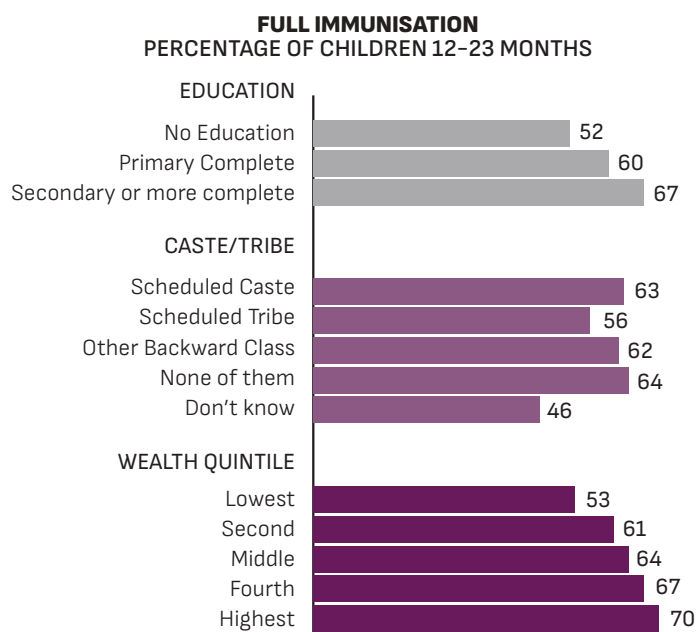
The fact that the current approaches to child health need to be re-examined can be further appreciated when one compares the progress on child mortality indicators in India compared to those of our neighbours Bangladesh and Nepal. In the 25 years between 1990 and 2015, the annual rate of decline of Under-5 Mortality in India was 3.9 per cent, while in Nepal and Bangladesh it was 5.5 per cent and 5.4 per cent respectively.

One possible explanation for the greater decline in mortality in Nepal and Bangladesh is that there is greater equity or lesser divergence in the care received among children from different social groups in these countries compared to the situation in India. For example, a comparison of available data shows that the coverage of immunisation or use of oral rehydration therapy (in cases of diarrhoea) shows far less divergence between the richest and poorest quintiles of the population in Bangladesh and Nepal than in India. Clearly social differences create huge barriers to health care among children in India. These deaths are not only preventable, but the social groups among whom children die at much higher rates are also predictable. Unfortunately, the social arrangements in India continue to influence health care access and quality in an unconscionable manner.

Child Health and Morbidity

Public health measures like sanitation and vaccines and better care through the availability of anti-biotics have been able to stem the tide of childhood deaths to a great extent. It is estimated that as there is greater reduction in childhood mortality there will be a transition from communicable or infectious diseases to non-communicable diseases, injury and congenital anomalies. This change takes place, according to experts, when the Under-5 Mortality rate is at least 35/1000 live births.⁴ While this may be true for many parts of India, over large parts of the country the rates are still higher. Mention has been made of the Social Determinants of Health framework which allows a deeper analysis to understand reasons for the difference in health outcomes. A similar analytic framework is the 'Political Economy of Health' which allows a more nuanced understanding of the nature and coverage of interventions. A useful definition is that it allows us to understand the many economic, political, and socio-historical forces which shape contemporary health problems, and our approaches to these problems. Its attention to the dynamics of race, class and gender, as these interact to effect the lives of individuals and broader social groups, makes a political economy approach an important supplement and complement to other theories.⁵

FIGURE 6 VACCINE COVERAGE AMONG DIFFERENT SOCIAL GROUPS



Source: NFHS-4

In contemporary times in India there is an emphasis on vaccination and curative care. While vaccination rates for the six vaccine preventable diseases have increased, coverage is still far from universal. India also adopted four new vaccines for protection against rotavirus, rubella, inactive polio virus and Japanese encephalitis in 2014. The emphasis on vaccination is global with large philanthropic organisation like the Bill and Melinda Gates Foundation supporting multi-national efforts like the GAVI: The Vaccine Alliance. On its website, GAVI makes a clear assertion of its understanding that vaccines are “among the most cost effective health interventions ever developed”⁶ This underlies their support to development of innovations and in developing new vaccines and new delivery technology and approaches. In developed countries of the Western Europe and Northern America there are many more vaccines that are administered including to older children. These include vaccines against influenza, hepatitis B, meningitis, Human Papilloma Virus (HPV) (only for girls) and so on.

If these are the vaccines available to children in the developed world there is no reason why such vaccines should not be available to children in India. However before agreeing to this assertion one needs to also examine how such countries reduced infant mortality in the first place. A recent article written by scholars from the Harvard T.H Chan School of Public Health delves into the history of reduction in infant mortality in the US to learn lessons for today.⁷ The report says that reduction of IMR from more than 100 to less than 30 took place before the widespread use of medical technologies and vaccination. Public health measures like chlorination of water, sanitation systems, civil registration systems, pasteurisation of milk played a great role along with education of mothers. The interventions of today in India, focus on individual, households, facilities and cheap technology and these are not a substitute for structural interventions.

A similar study of the decline in child mortality in Stockholm in Sweden finds that between 1878 and 1925 the overall mortality of children under the age of two years declined from 130 to 31 per 1000. Stockholm had a cholera epidemic and 3000 people died in 1853. Following this an intensive sanitation drive took place in the city with construction of indoor ‘privies’. The sewerage system was also constructed and expanded. This period also saw a rise in piped water supply and the per capita use of water. A ‘sanitary police’ made regular inspection of food and milk as well as cleanliness standards of premises. A voluntary organisation comprising of doctors, engineers, lawyers and representatives of charitable organisations influenced local health policy implementation.⁸

Compare the experiences in Western Europe and America in the early part of the last century with what we have in India today. The civil registration system is unreliable, water supply and sanitation measures are still not robust. The construction of latrines has been intensified under the Swachh Bharat Mission but the usage is not assured. Instead of sewerage systems we continue to depend on individual pit-latrines and the cleaning of these is delegated to the lowest social strata. Death of manual scavengers are reported frequently and despite being illegal there is a large population of manual scavengers all across the country. Rural water supply is often not purified and lately there have been increasing reports of arsenic contamination. The position of food and sanitary inspectors are inadequate and remain vacant.

A political-economy approach allows the examination of policy choices. India has among the lowest per capita investment in health and that investment is geared towards vaccines and medical technology. The health workforce is inadequate and yet we have a bio-medically heavy health delivery system. India has a wide range of health systems, both formal and informal, and while the formal ‘alternate’ systems have been acknowledged thorough the AYUSH Department (Ayurveda Yoga Unani Siddhi Homoeopathy) their role in the formal health care system has not been properly integrated. The informal sector comprising of unqualified practitioners, faith healers, herbalists, exorcists among others is very robust and is also allied with local health belief systems. India is a vast and diverse country with a multiplicity of such health belief systems. Unfortunately, these belief systems are rarely examined and integrated into modern medical care.⁹

One example of how the global community is focussed on ‘vaccines’ is provided by the Global Polio Eradication Initiative, known more popularly in India as the Pulse Polio Campaign. Polio is a water borne infection along with many other water-borne infections which are the scourge of childhood. The Pulse Polio Campaign focussed on the prevention of one disease through its intensive vaccination initiative. The focus on prevention was further misinterpreted at the community level when children with acute flaccid paralysis (the sign of polio) were provided no support for rehabilitation through the same system which went house to house identifying children for immunisation.

Polio is not a life-threatening disease in India because it affects peripheral muscles, but for years all children in India were subject to multiple rounds of polio, and many developed vaccine related polio which also remained unaddressed. It is true that Pulse Polio has been successful and future generations will be free of the disease, but there are still thousands with debility who have been ignored despite there being interventions to help them.¹⁰

Vaccines save lives, but a leading vaccinologist Dr Bernard van der Zeist has also sounded a number of cautions.¹¹ According to him, all vaccines are not successful all the time in all places and he makes the case for the HPV vaccine and others. The communication with communities often does not include a communication of risks. Infectious agents mutate and if we feel too secure as a result of vaccine protection then there can be panic as a result of ‘new’ infections. He also points out that vaccines are a product of ‘Big Pharma’ and there is little interest in replacing or improving ‘under-performing’ vaccines which are making profits anyway as they are part of large National programmes. Also developing countries lack the capacity to produce vaccines, even though this is increasing. In subtle ways Dr van der Zeist indicates how economic interests of Big Pharma along with technological predilection of international organisations and philanthropy may influence public policy in particular directions. Some of the challenges indicated were evident in the HPV trials conducted in India by an International NGO funded by Bill and Melinda Gates and which were stopped by the government when some of the tribal girls who were part of the study died.¹²

Common Diseases of Childhood in India

Diarrhoea – Diarrhoea continues to be an extremely common disease among children. The last round of National Family Health Survey (2015-16) found that over 9 per cent (or 1 in 11) children had diarrhoea in the two weeks before the survey and a little over a third (68 per cent) had sought treatment. Oral rehydration therapy is the most effective treatment and 60 per cent of the children received some form of oral rehydration. While there has been some change in the overall figures in the last 10 years it is a matter of concern that only 38 per cent of the children received continued feeding and Oral rehydration as recommended and 18 per cent did not receive any treatment.

Tuberculosis – Tuberculosis is a common disease among children but often remains undiagnosed since it does not show through the sputum test which is the common method for diagnosing the disease. It is estimated that children account for between 10 to 20 per cent of all tuberculosis cases in India. With over 2 million new cases every year, India has the highest burden of tuberculosis in the world. Symptoms of tuberculosis in children include fever, weight loss, poor growth, cough and swollen glands.

Malaria – Malaria is a very common infection in India and is spread by mosquito bites. Even though there are some debates about the contribution of malaria to the overall number of deaths among children it is reported to be as high as 55,000 in a year. Malaria has remained a problem due to lack of facilities to examine blood smears. In the absence of such diagnostic facilities it is recommended that all cases of fever be given ‘presumptive treatment’ with anti-malarials, but such treatment regime risks promoting resistance to anti-malarial drugs. A study from Delhi showed that plasmodium vivax the more common form of malaria is responsible half for all children admitted with malaria complications in a large city hospital.¹³

Vitamin A deficiency – Vitamin A deficiency is a major problem among children in India. It can lead to early mortality and is a leading cause of blindness in children. More than 50 per cent of children below 6 years of age in India have subclinical Vitamin A deficiency and 0.7 per cent have clinical Vitamin A deficiency.¹⁴ A study conducted in rural Maharashtra between 2002 – 03 found the presence of Bitot's spot in the eye and Nightblindness (clinical signs of vitamin A deficiency) were much higher than the WHO cut off rates. These rates among children of scheduled castes and labourers was between 13 to 20 times higher.¹⁵ India has had a Vitamin A supplementation programme for children since the 1970's and according to NFHS 4 only 60 per cent of all children between 6 months and 5 years received a dose of Vitamin A in the 6 months preceding the survey.

ACUTE ENCEPHALOPATHY SYNDROME – LITCHI CASE

In June 2019 the newspapers were alive with the news of over 100 children from Muzzafarpur district of Bihar dying of Acute Encephalitis Syndrome (AES). This was not the first time this was reported from this area. In 2012 and 2014 over 300 children died of the same symptoms. There is confusion about what could be the cause. Some blame the heat wave, others a viral infection still others think it is due to pesticide use on litchi trees.

However, studies into this condition have found that this condition is due to interaction of a chemical called methylene cyclopropyl glycine (MCPG) found in the litchi fruit with severe malnutrition. This chemical becomes a toxin if the blood glucose level becomes too low. All the children are from poor labour families working in the litchi orchards who often go to bed hungry. Extended hunger reduces the blood glucose level and the chemical starts interfering in the chemical processes in the body causing the brain to become affected. The treatment is simple, administer 10 per cent glucose intravenously as soon as possible. Unfortunately, the families are not getting the children into hospital on time and when they do are receiving 5 per cent glucose infusion, which does not reverse the damage. The ongoing AES outbreaks highlight how the children of the poor die even when the means to save them are known and simple.

Source: <https://www.thehindu.com/news/national/a-hundred-deaths-and-no-answers/article28102769.ece>. Last accessed on 30 October 2019.

In a somewhat similar situation thousands of poor children from the Gorakhpur division of Uttar Pradesh died from Japanese encephalitis since the turn of the century. The disease is spread by mosquitos and from breeding pigs in an extremely unhygienic civic environment. These are sure signs of poverty as well as governance failure. Today there is a widespread immunisation campaign against Japanese encephalitis and the death rates are lower, but children continue to die.¹⁶

ROLE OF THE ANGANWADI IN SECURING CHILD HEALTH

The Anganwadi Centre (AWC) is the key institution providing preventive and promotive health to children below the age of 6 years. Run through the Integrated Child Development Services (ICDS) the AWC is expected to provide a package of services comprising: (1) supplementary nutrition, (2) immunization, (3) health check-up, and (4) referral services for all children below age six. These are done through activities like regular health check-ups, recording of weight, management of malnutrition, treatment of diarrhoea, de-worming and so on. The Anganwadi Worker (AWW) is also expected to refer sick or malnourished children to the PHC or its sub-centre. The Rapid Survey of Children (RoC) conducted by UNICEF for the Ministry of Women and Child Development (MoWCD) found that while AWC was somewhat effective in providing immunisation services (49 per cent of children) its role in providing diarrhoea care (11 per cent) or routine health check-up (8 per cent) or referral (7 per cent) was very low. However these AWC were performing better in rural areas and for children from socially marginalised communities.

Source: Rapid Survey of Children (2013 – 14), MoWCD Gol - <https://wcd.nic.in/sites/default/files/RSOC%20National%20Report%202013-14%20Final.pdf>

Malnutrition

India can be called the hunger and malnutrition capital of the world with the prevalence of underweight children being twice as much as in Sub-Saharan Africa. According to the Global Nutrition Report of 2018¹⁷ India has 46.6 million children who are stunted and 25.5 million children who are wasted.ⁱ Overall 31 per cent of the world's stunting is in India with 239 of 604 districts having stunting levels above 40 per cent. Some of the factors which influence stunting included the following:

- low BMI among women
- level of maternal education
- age at marriage
- levels of antenatal care received
- children's diets
- practice of open defecation
- household assets and household size

This highlights how malnutrition results from a complex interaction of factors like poverty, gender discrimination as well as inadequate to essential public services like education, health and sanitation.

The Global Nutrition report further tracks progress of countries on nine nutrition related targets and 25 indicators towards meeting goals on Non Communicable Diseases which include conditions related to undernutrition as well as over-nutrition. India is among these countries which are not on track for any of these nine targets.

The Rapid Survey of Children (2013-14) provides some deeper insights into the nature of childhood malnutrition. About 18 per cent of all babies born are born underweight or below 2.5 kg in weight, and nearly 80 per cent of all babies are weighed within 24 hours of birth. The status of stunting, wasting and underweight of children under the age of 5 years is provided in Table 2. The situation is clearly worrisome with nearly 17.3 per cent children severely stunted and 15.1 per cent wasted and 29.4 per cent of children underweight. The levels of severe stunting become worse in states like Uttar Pradesh, Bihar, and Meghalaya where it is above 25 per cent. The distribution across states indicates widespread malnutrition as Jharkhand, Odisha, Madhya Pradesh, Chhattisgarh, and Gujarat additionally show more than a third of all children to be underweight. Even states like Kerala, Goa and Tamil Nadu have stunting among a fifth (20 per cent) of all children.

TABLE 2: MALNUTRITION IN CHILDREN AT DIFFERENT AGES (IN PER CENT)

Age of child	Severe stunting	Stunting	Severe wasting	Wasting	Severe underweight	Underweight
< 6 months	8.3	17.1	6.3	17.8	7.4	17.8
06 - 08 months	11.3	23.9	5.8	16.5	9.5	22.9
09 - 11 months	12.2	29.5	5.8	18.1	10	26.6
12 -17 months	17.1	37.7	5.3	16.2	9.5	26.4
18 - 23 months	22.7	45.8	5.6	16.5	12	33.3
24 - 35 months	18.5	42.8	4.3	14.3	9.1	30.1
36 - 47 months	18.7	44.1	3.6	13.7	9.4	31.6
48 - 60 months	19.5	43.1	3.8	13.7	9.6	35

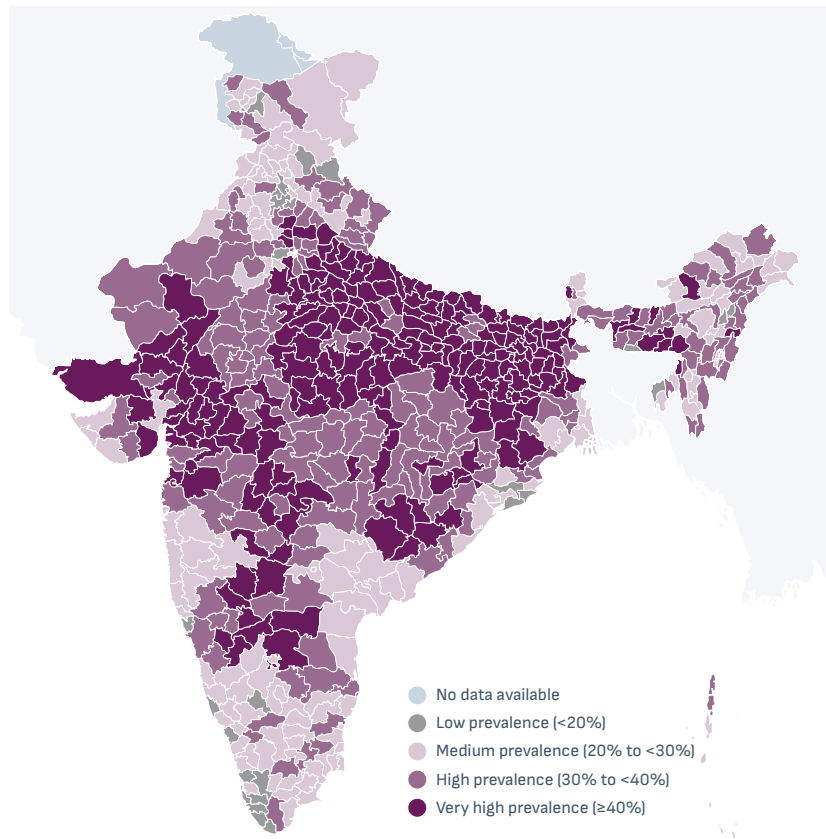
ⁱ Stunting signifies long term malnutrition and the height of the child is low for age and wasting signifies acute food shortage and significant risk of mortality.

31.4 PER CENT OF INDIAN CHILDREN WILL BE STUNTED BY 2022: REPORT

NEW DELHI, JUNE 25, 2019,

Almost one in three Indian children under five years will still be stunted by 2022 going by current trends, according to an analysis of the country's food and nutrition security released on Tuesday. Over the last decade, child stunting — which is a measure of chronic malnutrition — has reduced at a rate of about 1per cent per year, the slowest decline among emerging economies. At this rate, 31.4 per cent of children will still be stunted by the 2022 deadline. India must double its rate of progress to reach the target of 25 per cent by that time, says the report.

Source: <https://www.thehindu.com/news/national/314-of-indian-children-will-be-stunted-by-2022-report/article28138523.ece>

FIGURE 7 MAP OF STUNTING PREVALENCE IN INDIA

Source: Global Nutrition Report 2018, page 49

There is some concern that communities in India do not follow optimal infant and young child feeding (IYCF) practices which include early and exclusive breast feeding for the first six months, complementary feeding from 6 months onwards with appropriate food including eggs, meats, fish or poultry and active feeding during illness. Studies have shown that the feeding practices are substantially different from what is recommended. This is both due to poverty as well as food related beliefs which are deeply cultural issues. Often these food related beliefs are considered 'deleterious caring practices' or 'traditional beliefs' or the result of 'illiteracy'. Such an approach ignores that food habits and beliefs are an integral part of 'culture' and 'identity' and communities often follow what they think is 'beneficial' in any situation. They are often limited by poverty, but what appears discriminatory from the outside is also part of the cultural code of the community.

SC, ST AND OBC CHILDREN SUFFER MORE...

"There is a large gap between the social groups in India in terms of child malnutrition. While India has 38.7 per cent and 29.4 per cent of children suffer from stunted growth and underweight. Nearly 42.4 per cent and 32.7 per cent of children from schedule caste (SC) suffer from stunted and underweight, respectively. The percentage of stunted and underweight children from SC groups is more than the national level. The level of nutrition among children improves with the social status.

Almost 38.9 per cent and 29.6 per cent of children from Other Backward Classes (OBCs) suffer from growth retardation (Stunted) and low body weight (underweight) respectively. The percentage of wasted children is high in Schedule Tribes (18.7), the percentage of wasted children reduce with the social status. Schedule caste and Other Backward Class have only 15.5 per cent and 14.8 per cent of wasted children. Government has to implement some more effective programmes mainly focusing on the socially backward group of the country to reduce the extent of malnutrition."

Source: Usmani G, Ahmad N 2017 Health Status of Children in India. 3: 138. doi:10.4172/2471-9870.10000138 page 2

Unfortunately, there is little research to understand the food related beliefs and practices of a community and integrate these findings within health interventions. However large-scale public policy decisions are known to be influenced by culture for example the recent incidents around refusal to use onion and garlic by the Akshay Patra Foundation for food supplied to the Mid-day Meal programme of the government.¹⁸

Similarly, the use of eggs is excluded from the Mid-day meal programme in eleven states for cultural reasons even though it is part of the list of foods recommended in the optimal list of food for infants and children.¹⁹

The discipline of medical anthropology allows for the examination of the cultural aspects of health and healthcare. However, the discipline is not commonly taught in India and rarely integrated in public health practice. The health care policy-making process in India is heavily influenced by the bio-medical approach. In a country with such diversity it is important to blend science with an understanding of tradition and strengthen practice with a respect for people's beliefs and practices in a creative and positive way.²⁰

While basic nutritious food is not available to many children due to various reasons mentioned above there has been an increased push for food fortification, micro-nutrient supplementation and nutraceuticals in the country.

While the benefits of the Vitamin A supplementation programme and that of iodised salt for controlling goitre are acknowledged, there is also a concern that an emphasis on nutritional supplementation through processed food leads to increasing participation of businesses and for-profit industry. The impact of this transition to processed food on the rural poor is also a matter of concern. To give an example the 'nutrition drink' Horlicks™ now has double the combined sales of Coca Cola and Pepsi and the new target is the bottom of the pyramid population who are being sold smaller and thus cheaper or more affordable packs of the food supplement.²¹

The Problem of Obesity

Childhood obesity is considered an important precursor of non-communicable diseases like diabetes and cardiovascular diseases in later life. It is emerging as an important problem in urban and affluent India. Obesity also affects the physical health and social wellbeing of children, including academic performance and a slew of cardiovascular, orthopedic, neurological, hepatic, pulmonary, and renal disorders.²² The combined overweight and obesity levels are showing an upward trend and a review of available studies show that value increased from 15.9 per cent in prior to 2001 to 16.3 per cent between 2001–2005 to 17.4 between 2006–2010 and increasing to 19.3 per cent after 2010. However, these are data from a limited number of studies and there are many states from where no studies were identified.²³

TRIBAL CHILDREN AND MALNUTRITION

8.6 per cent of the country's population consists of tribal people, and their population is over 105 million

40.6 per cent of ST population lived below the poverty line as against 20.5 per cent of the non-tribal population in 2009–10

Compared to other social groups, tribal children continue to be the most undernourished. The prevalence of underweight is almost one and half times in tribal children than in 'other' castes. Only 29–32 per cent ST children had adequate intake of both protein and calories

The Rapid Survey of Children (2013–14) shows that the highest percentage of children with low birth weight (less than 2.5 kg) was found among the tribal population

On an average, intake of cereals and millets decreased by about 50 gm/ CU/ day between second (1988–90) and the third National Nutrition Monitoring Bureau (NNMB) surveys (2008–09) in tribal areas. The average daily intake of proteins decreased by about 3 gm/ CU/ day and vitamin A by about 117 µgm/ CU/ day. The average intake of energy decreased by nearly 150 Kcal/ CU/ day

Source: Report of the Expert Committee on Tribal Health: Bridging the Gap and a Roadmap for the Future (2018) - <http://nhsrindia.org/news/report-expert-committee-tribal-health>

Childhood obesity is a result of dietary intake, physical activity or sedentary behaviour as well as genetics. Parental influence extends beyond genetics to modelling as well as feeding style. Increased 'fast food' and sugary drink consumption has also been linked to childhood obesity. The issue of childhood obesity needs to be tackled urgently through positive parenting, promoting sporting activities, as well as policy options which control the 'easy' sale of unhealthy food especially to children including through taxation and advertising and agricultural policies promoting healthy food. This has been done in countries like Canada, Australia and many countries in Europe²⁴.

Adolescent Health

The ambit of child health has been widened in recent years from its exclusive focus on under 5 health to include adolescent concerns. Adolescent health concerns have primarily stepped from the concern around the large number of adolescent girls who get married and have children. Despite having a law restricting the age at marriage for nearly 90 years, under-age marriage is widespread in India. The demographic and health concern around this issue was mostly around the health 'risk' that it creates both for the young mother and her vulnerable child. This concern for reproduction has not been matched by any concurrent interest in the emerging sexuality of the adolescents and efforts at developing curricula for sexuality education for adolescents have been met with policy resistance.

When the Adolescent Education Programme (AEP) was introduced in 2005 it faced resistance from many quarters and was banned in many states. The National AIDS Control Organisation (NACO) was compelled to revise the curriculum and a Parliamentary Committee opined that it would 'promote promiscuity of the worst kind'²⁵. According to Ministry of Human Resource Development website the objective to the AEP is to "develop awareness and positive attitude toward population and development issues leading to responsible behaviour among students and teachers and, indirectly, among parents and the community at large". There is also mention of Adolescent Sexual and Reproductive Health (ARSH) as a concern of the MHRD and this

EGG-LESS MEALS AT ANGANWADIS? MADHYA PRADESH'S BAN PITCHES NUTRITION AGAINST POLITICS

The only explanation for the egg ban is that Chief Minister Shivraj Singh Chouhan is a "strict vegetarian" and eggs are a "sentimental issue" for him.

Updated: Jun 06, 2015, 10.56 AM IST

By Rohini Mohan



The photo accompanying this article was taken in 2013 by Sumitra, an anganwadi worker in Bangalore. It was what the children lovingly called "egg day", one of the three times a week they are served boiled eggs. "Attendance soars on egg days," says Sumitra. When the picture was taken, anganwadis in Karnataka had just started providing eggs following the tragic news of a six-year-old girl in Bangalore who died of pneumonia, intensified by severe malnourishment. While a state directive still exists, anganwadi workers say the extra funds for eggs rarely come. The staff has often paid for the eggs from their own meagre salary. "I'm not sure how much longer egg days will last," says a worker who didn't want to be named.

The debate around eggs in the school feeding programme has resurfaced this week, as the Madhya Pradesh government banned eggs in anganwadis. 52 per cent of children in the state are malnourished, but the only explanation for the ban is that Chief Minister Shivraj Singh Chouhan is a "strict vegetarian" and eggs are a "sentimental issue" for him. With this, MP joins several states that have knocked eggs off their school feeding programme. India has 194.6 million undernourished people, the highest number in ...

Read more at: http://economictimes.indiatimes.com/article-show/47560045.cms?from=mdr&utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

aspect is covered currently by Ministry of Health and Family Welfare through the Rashtriya Kishor Swasthya Karyaram (RKSK) introduced in 2014. The RKSK has increased its ambit from the earlier focus on reducing maternal mortality to now improving maternal health outcomes and adolescent malnutrition, and has also included issues like mental health, substance abuse, gender based violence and non-communicable disease prevention among adolescents. The issue of healthy positive sexuality and fulfilling sexual rights through accurate information which is an important concern of growing and maturing adolescents still finds no explicit mention in policy.

There is some contradiction in the stated policy interest in securing the reproductive health of adolescents and policies and programme which address the health and well-being of these same adolescents. Most maternal health entitlements like Janani Suraksha Yojna (in the non-High Focus States) or the Pradhan Mantri Matru Vandana Yojana (PMMVY) are not available to adolescents as they are considered to be reproducing at an 'undesirable' age. Thus, adolescent girls who are married off by their families and become mothers due to no fault of theirs are inadvertently penalised through the denial of support. The contraceptive programme is focussed on long term contraception and focusses its attention on methods like the long term Intra Uterine Device and sterilisation. Even though there is recognition of early sexual initiation and early child-bearing among girls there is little emphasis on either contraceptive education or temporary methods for these adolescent girls. While services for adolescents are misdirected, the adolescent education programme also ignores many adolescent realities.

Adolescents in India are faced with early sexual initiation and child bearing and it is extremely important that adolescents be equipped with accurate information about the body and its processes and how to reduce their own vulnerability to unsafe sex or coerced sex, unwanted reproduction while at the same time they are able to come to terms with their own growing sexual interests and needs in a healthy and respectful manner. The recent amendments to the POCSO Act while protecting children from sexual abuse has also ignored the growing sexual maturity of adolescents by mandating that all sexual activity below the age of 18 years amounts to statutory rape.

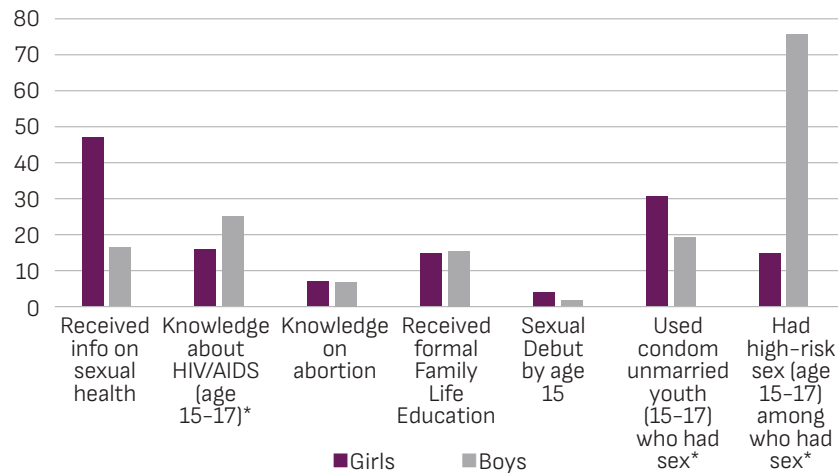
ADOLESCENT HEALTH PROBLEMS IN INDIA: A REVIEW FROM 2001 TO 2015

"Sexual health knowledge among adolescent varies from 41 per cent to poor. Knowledge about sexually transmitted diseases and sexuality is less. Prevalence of dysmenorrhoea varies from 67.2 per cent to 56.15 per cent among adolescent girls. Prevalence of tobacco use varies from 25.1 to 12 per cent. Prevalence of obesity varies from 3.4 per cent to 0.35 per cent and overweight varies from 5.5 per cent to 5.84 per cent. Prevalence of anaemia varies from 29 per cent to 41.1 per cent. Adolescents are facing depressive problems, physical fights, worry and loneliness. Prevalence of depression varies from 18.4 per cent to 13.3 per cent. Prevalence of dental problems varies from 18.2 to 41 per cent... adolescents in India are facing problems of sexually transmitted infections, dysmenorrhea, tobacco and alcohol use, depression, physical fights, worry, loneliness and oral health problems. This needs a participation of family, community and government to resolve the issue."

Source: Punyatoya Bej. Indian Journal of Community Health / VOL 27 / ISSUE NO 04 / OCT – DEC 2015

Sexuality and health among adolescent – There is sufficient evidence that the age at first sex among boys and girls in India is often within adolescence. In the case of girls, much of it is within marriage. In the case of boys one in 10 boys have their sexual initiation before marriage and during adolescence. This first sexual experience is often unprotected and in the case of girls it is often coerced²⁶.

According to the Behaviour Surveillance Study of 2006, 50 per cent of both male and female youth in the age-group 15 – 25 had their first sexual intercourse by the age of 18 years. A small proportion of less than 5 per cent had their first sex before the age of 15 years. The study also found that sex with non-regular partners was 6 per cent among males in the age-group 15 – 19 years. Condom use with non-regular partners was about 60 per cent which indicates 40 per cent of sex with non-regular partners was unprotected, and this was lower in rural India. Compared to a similar study in 2001

FIGURE 8 SEXUAL HEALTH KNOWLEDGE AND PRACTICES

Source: NFHS4. Other data from BSS Youth 2006

(BSS 2001) the study of 2006 showed a slight increase in the levels of casual sex among youth and adolescents.²⁷

Adolescents in India are faced with a set of contradictions. On the one hand the availability of technology has made sexually explicit material easily available through the internet and internet penetration is increasing day by day. Age at sexual initiation is low, which indicates that these 'children' actually have sex, either within marriage (or even without marriage), in the case of girls or in casual relationship in the case of boys. These relationships are also often unprotected and coerced. On the other hand, society frowns upon a healthy discussion on issues related to sexuality and thus they do not have access to either accurate information or a set of values around what constitutes healthy sexuality.

Many girls are married by their families during childhood, but overall the age of marriage is increasing. So in effect we have a confusing situation where less children are being married, casual sex happens which is often unsafe and coerced but is publicly not acknowledged; legally sex before the age of 18 amounts to rape and so no contraceptive services can be officially offered. To complicate matters these children have access to inaccurate and exaggerated information about sex on their mobiles but cannot access healthy accurate information from school or the health system. It does not help that there are many myths around sexuality, one such being the myth of the 'dhat syndrome' among males, which relates different kinds of seminal discharge with weakness and impotence. With little source of accurate information around puberty and bodily changes these boys often visit 'quacks' and informal health providers whose advertisements dot the rural landscape.

The author was involved in an educational intervention with young boys in the age group 14-18 years in rural Rajasthan, where these boys were provided gender, health and sexuality related information through an edutainment approach using the mobile phone. Two alternative methods of narrow-casting was used, the Interactive Voice Response System (IVRS) and audio files, to share and discuss issues raised through audio-drama.²⁸ Results of this intervention indicate this methodology is able to reduce sexual myths, reduce gender-stereo typical behaviour among boys, and also create support for increasing girls' education and reducing early marriage.²⁹

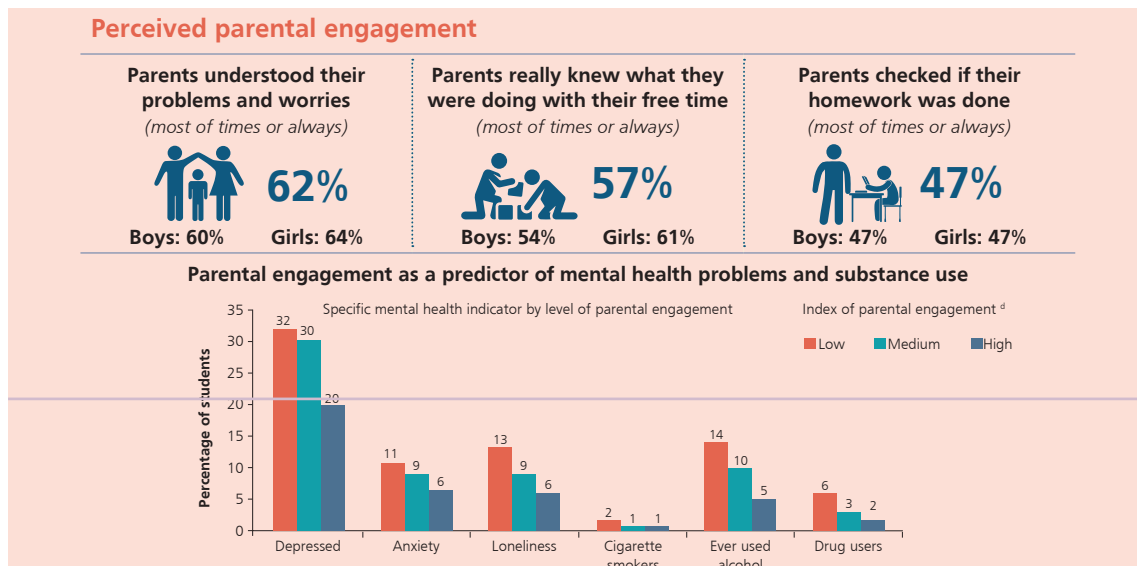
Mental health – Adolescent mental health is becoming an area of concern with increasing reports of violence, including sexual violence as well as suicide among adolescents. Many of these reports are from urban India, and include both the affluent and the poor. According to a WHO report published in 2017,³⁰ the prevalence of mental health issues among adolescents (13 – 15 years) is as follows:

- Suicide rate (among those aged 15 – 29 years) – 35.5 per 100,000 population
- Depressed or felt sad or hopeless for 2 weeks or more in a row – 25 per cent
- Distracted and hard time staying focussed on homework or usual work– 11 per cent

- Anxiety and could not sleep because of being worried – 8 per cent;
- Loneliness, felt lonely most of the time – 11 per cent;
- Most of these rates were similar among boys and girls

Children with mental health problems were also more likely to have low parental engagement, be bullied in school or report substance abuse.

MENTAL HEALTH PROBLEMS AMONG ADOLESCENTS AND PARENTAL ENGAGEMENT



Source: WHO. 2017. Mental health status of adolescents in South-East Asia: Evidence for Action. page 22

Substance Abuse – Overall 11 per cent of the children in the age of 13–15 years reported using tobacco, alcohol, marijuana or inhaling fluids.³¹ At the national level, an estimated 4.6 lakh children need help for their inhalant use (harmful use/dependence). Use of alcohol, opoid, cannabis use, has been reported among children aged 10-17 years.³²

FIGURE 9 TOP FIVE STATES: NO. OF CHILDREN WHO NEED HELP FOR INHALANT USE PROBLEMS (IN THOUSANDS)



Source: Ministry of Social Justice and Empowerment.
<http://www.socialjustice.nic.in/writereaddata/UploadFile/Survey%20Report636935330086452652.pdf>

Public Policy and Child Health

The interest in the welfare of children was included within the policy framework from the very first Five-Year Plan with the setting up of Indian Council of Child Welfare and Central Social Welfare Board which was made responsible for running a clutch of services for children like Balwadis, crèche, orphanages mostly through voluntary organisations, which would be akin to NGOs now. The vaccination programme which was initially limited to the smallpox vaccine, but with the success in eradicating the disease it was expanded to the Expanded Programme on Immunisation (EPI) in the late 1970's following global trends and with support from the WHO.

The number of diseases covered was increased to cover six vaccine preventable diseases namely polio, diphtheria, tetanus, whooping cough (pertussis), measles and tuberculosis. Subsequently the programme was intensified and renamed the Universal Immunisation Programme (UIP).

Children's health was initially clubbed with maternal health and together seen as mother and child health (MCH). In the late 1960s Family Planning activities started taking precedence within health programming. In the late 1990s the emphasis on family planning was reviewed and the Reproductive and Child Health programme was started. By this time the Global Polio Eradication Initiative was incorporated as the Pulse Polio programme. In the meanwhile there was growing awareness about the importance of the large adolescent population in India, especially that of adolescent girls. In 2004 the Adolescent Reproductive and Sexual Health (ARSH) was started and later this was expanded and integrated into the Reproductive Maternal Neonatal Child Health plus Adolescent (RMNCH+A) programme which is the current formulation. The adolescent component within this programme is known as the Rashtriya Kishor Swasthya Karyakram (RKSK) which was launched in 2014. The programme which includes setting up of Adolescent Friendly Clinics with counsellors at the district and sub-district levels is not yet fully functional. Other interventions in the programme include training of Peer Educators, quarterly Adolescent Health Days, Iron Folic Acid Supplementation and a Menstrual Hygiene Scheme. Though there is mention of gender equity within the strategy most of the interventions are aimed at girls.

The Integrated Child Development Scheme (ICDS) implemented by the Ministry Women and Child Development is the key health and nutrition intervention for children in the 0 – 6 years age group. The scheme is implemented through the Anganwadi and includes a nutritional component, health check-ups and referral along with pre-school education. The Anganwadi Worker (AWW) along the Accredited Social Health Activist (ASHA) and the Auxiliary Nurse Midwife (ANM) form the triumvirate of health related workers at the community level. Some of the immunisation also happens through the AWW but the function now is located within the aegis of the Village Health and Nutrition Day (VHND). Childhood malnutrition is also addressed through the Mid-Day Meal (MDM) scheme which is provided through the primary school system and implemented by the Ministry of Human Resources Development (MHRD). It started by providing dry rations in 1995 but was later mandated to serve hot cooked meals. In April 2008 it was extended all over the country.

The MHRD along the MoHFW also implements the Rashtriya Bal Swasthya Karyakram (RBSK) screening children for 4Ds or Defects at Birth, Diseases, Deficiencies and Development delays including disabilities. Children are supposed to be screened at home, in the Anganwadi and in schools. Children who are diagnosed with any of the listed diseases is expected to receive free treatment in government hospitals. A District Early Intervention Centre (DEIS) is expected to be set up in each district to provide referral support to the children identified through screening. Though the scheme was officially introduced in 2013, there is little available data on the implementation of the scheme.

Health policies need to throw light on some of the more marginalised groups in the country, such as the SC and the ST children. 8.6 per cent of the country's population is tribal. But According to the Report of the Expert Committee on Tribal Health: Tribal Health in India – Bridging the Gap and a Roadmap for the Future (2018)³³, Ministry of Health and Family Welfare and Ministry of Tribal Affairs:

- NFHS-4 reports Infant Mortality Rate (IMR) for the ST population was 44.4 per 1,000 live births of children under one year of age (for the non-STs it was 32.1) and 1-4 years ST children the child mortality rate was 13.4 (for the non-STs it was 6.6) the Under-five Mortality Rate (U5MR) was 57.2 per 1,000 live births (for the non-STs it was 38.5)
- The Rapid Survey of Children (2013-14) shows that the highest percentage of children with low birth weight (less than 2.5 kg) was found among the tribal population
- Only about 25 percent pregnant and lactating ST women and 29-32 per cent ST children had adequate intakes of both protein and calories

Conclusion

Children are usually considered the future but the book “My Name is Today” by David Morely and Hermione Lovel highlighted the plight of children’s health in less developed countries and need to address them immediately. This book was published nearly 35 years ago in 1986. Since then India has become one of the global economic super-powers, but as this chapter has tried to outline, the status of children’s health continues to be in peril. The vastness of the country hides many diversities, but the progress on children’s health indicators has been slow, and in many cases slower than our much ‘poorer’ and less vaunted neighbours.

As a society there is an urgent need to address children, and not just the younger children, but those of adolescents. The needs of children are divergent at different age groups and in different settings. We still do not know enough about many child health issues such as the concerns of children living in urban slums, the mental health of the lonely single child, how cultural practices influence nutritional status of children despite economic growth and many more. Child health requires protection, but since many children in India are adolescents, we also need to acknowledge the physical, mental and emotional changes of this period and the increasing agency and autonomy of children. The high proportion of mental health problems and of violence are signs of a larger illness in society which does not acknowledge these needs of growing children.

In the final analysis this change needs concerted action both at the public or social level and the policy or governmental level. It is hoped that this chapter can contribute to a somewhat greater understanding of the various issues that influence the health of children.

Endnotes

- 1 See <https://www.indianpediatrics.net/may1999/may-461-463.htm> Last accessed on 30 October 2019
- 2 Census of India. 2019. For state-wise list of IMR in 2017 see http://censusindia.gov.in/vital_statistics/SRS_Bulletins/SRS_Bulletin-Rate-2017-_May_2019.pdf Last accessed on 30 October 2019
- 3 Commission on Social Determinants of Health. 2008. Closing the Gap in a Generation: Health Equity Through Action on The Social Determinants of Health. World Health Organization. Geneva. https://www.who.int/social_determinants/final_report/csdh_finalreport_2008.pdf Last accessed on 30 October 2019
- 4 Were, W et al. 14 September, 2015. Children's Health Priorities. <https://doi.org/10.1136/bmj.h4300> Last accessed on 30 October 2019
- 5 Minkler, Meredith et al.1994. The Political Economy of Health: A Useful Theoretical Tool for Health Education Practice. International Quarterly of Community Health Education <https://doi.org/10.2190/T1Y0-8ARU-RL96-LPDU> Last accessed on 30 October 2019
- 6 www.gatesfoundation.org/What-We-Do/Global-Development/Vaccine-Delivery Last accessed on 22 June 2019
- 7 Bhatiya, A et al. 2018. Learning from History about Reducing Infant Mortality : Contrasting the Centrality of Structural Interventions to Early 20th Century Successes in the United States to Their Neglect in Current Global Initiatives" The Milbank Quarterly. Vol 97 No 1. page 285 -345
- 8 Brustrom, et al. 2005. Equitable Child Health Interventions: The Impact of Improved Water and Sanitation on Inequalities in Child Mortality in Stockholm 1878 to 1925. American Journal of Public Health Vol 95. page 2
- 9 Contractor, S.Q., Das, A., Dasgupta, J. et al. Int J Equity Health. 2018. 17: 134. <https://doi.org/10.1186/s12939-018-0850-9> Last accessed on 30 October 2019
- 10 Yotsu et al. 2012. Support for Children identified with Acute Flaccid Paralysis Under Global Polio Eradication Programme in Uttar Pradesh India: A qualitative study. BMC Public Health. 12:229
- 11 Van Der Zeijst B. 2011. Fascination for vaccination: about achievements and challenges in the vaccine world Hum Vaccin. 2011 Feb;7(2):144-8.
- 12 <https://ijme.in/articles/deaths-in-a-trial-of-the-hpv-vaccine/?galley=html> Last accessed on 30 October 2019
- 13 Mittal, M et al. 2014. Emerging Trends of malaria among children: A study from a Tertiary Care centre in North India, J Vector Borne Dis 51, June 2014, page. 115-118
- 14 Akhter, S et al (2013) Vitamin A Deficiency in South Asia J HEALTH POPUL NUTR 2013 Dec;31(4). page 413-423
- 15 Arlappa et al. 2008. Clinical and Subclinical vitamin A deficiency among rural pre-school children of Maharashtra, India Annals of Human Biology Vol 35, Issue 6
- 16 <https://www.telegraphindia.com/india/encephalitis-claims-16-kids-in-gorakhpur/cid/1692998> Last accessed on 30 October 2019
- 17 Development Initiatives. 2018. Global Nutrition Report: Shining a Light to Spur Action on Nutrition. Bristol. UK. https://globalnutritionreport.org/documents/352/2018_Global_Nutrition_Report.pdf Last accessed on 1 November 2019
- 18 Kulkarni, Tanu. 16 March, 2019. No Onion and Garlic in Mid-day Meals. The Hindu. <https://www.thehindu.com/news/cities/bangalore/no-onion-and-garlic-in-midday-meals/article26555844.ece> Last accessed on 30 October 2019
- 19 Bhtanagar, Gaurav Vivek. 9 July, 2018. Despite Nutrition Benefits, Most BJP States Keep Eggs out of Mid-Day Meals. The Wire. <https://thewire.in/health/bjp-states-health-children-eggs-mid-day-meal-nutrition> Last accessed on 30 October 2019
- 20 Mishra, A. 2007. Teaching Medical Anthropology in India Anthropology News 48 (3): 28-29
- 21 Street, Alice. 2015. Food as Pharma: Marketing Nutraceuticals to India's Rural Poor. Critical Public Health, 25:3, page 361-372
- 22 Sahoo, K et al. 2015. Childhood Obesity: Causes and Consequences. J Family Med Prim Care 2015 Apr-Jun; 4(2). page 187 - 192
- 23 Ranjani, H et al. 2016. Epidemiology of childhood overweight & obesity in India: A systematic review Indian J Med Res. 2016 Feb; 143(2). page 160-174.
- 24 Kar, Sitanshu Sekhar and Subhranshu Sekhar Kar. 2015. Prevention of Childhood Obesity In India : The Way Forward. J Nat Sci Biol Med. 2015 Jan-Jun; 6(1): 12-17. doi: 10.4103/0976-9668.149071 PMID: PMC4367021 www.ncbi.nlm.nih.gov/pmc/articles/PMC4367021/ Last accessed on 30 October 2019
- 25 Sawhney, Isha Singh. 1 August 2014. Indian politicians want no sex in sex education <https://scroll.in/article/672379/indian-politicians-want-no-sex-in-sex-education> Last accessed on 30 October 2019
- 26 Santhya, K G et al .2011. Timing of first sex before marriage and its correlates; evidence from India, Culture Health and Sexuality Vol 13 (3). page 327 - 341
- 27 National Behavioural Surveillance Survey 2006 Youth, National Institute of Medical Statistics and National AIDS Control Organisation, Ministry of Health and Family Welfare, Government of India
- 28 <https://www.aljazeera.com/indepth/features/2017/01/digital-tool-teaches-indian-boys-gender-equality-170131120007840.html> Last accessed on 30 October 2019
- 29 <https://www.aljazeera.com/indepth/features/2017/01/digital-tool-teaches-indian-boys-gender-equality-170131120007840.html> Last accessed on 30 October 2019
- 30 World Health Organization. 2018. Mental Health ATLAS 2017. https://www.who.int/mental_health/evidence/atlas/mental_health_atlas_2017/en/ Last accessed on 17 October 2019
- 31 World Health Organization. 2017. Mental Health Status of Adolescents In South-East Asia: Evidence For Action. WHO -SEARO, New Delhi.
- 32 Ambekar A, Agrawal A, Rao R, Mishra AK, Khandelwal SK, Chadda RK. 2019. Magnitude of Substance Use in India. Ministry of Social Justice and Empowerment, Government of India. New Delhi
- 33 World Health Organization. 2018. Mental Health ATLAS 2017. https://www.who.int/mental_health/evidence/atlas/mental_health_atlas_2017/en/ Last accessed on 17 October 2019

4

CHILD PROTECTION IN INDIA

NICOLE RANGEL MENEZES

Photo: Claudio



Introduction

“You should have let me die that night,” 26-year-old Y tells his mother who is frustrated at how they seem to be back at square one. Two years ago, he met with an almost fatal motorcycle accident on his way home from work. Months of hospital care, multiple brain surgeries, and Rs.12 lakhs of bills later, his family has lost the little sense of ease they had acquired after years of struggle. They hail from the hilly reaches of Pauri Garhwal where Y lived until he was nine years old with his mother, two younger siblings and grandmother. Every day the three children walked two kilometers uphill to school, while his mother took their cow to graze as she collected wood for fire. At that time his father worked as casual labour in Delhi visiting periodically with small sums of cash. Y’s father was diagnosed with mental illness and lost his work. They were penniless. In 2000, Y’s mother moved with the children to Delhi to find work. At times, Y’s parents would lock the three children in their single rented room leaving them to go out in search of work. As they grew older Y and his sister would return from school and sew embroidery pieces with their mother to augment income. The parents undertook domestic work. Y studied till Class 10 after which he did an ITI diploma and joined a computer hardware company, where after six years he was earning ₹15000/- a month. S, Y’s younger brother failed through school, finally dropping out after class 11. “Whether I study or not I’m going to be a driver or a security guard”, was a remark S made often as a teenager. S had not worked till Y’s accident when he was forced to. He found work as a loader of boxes where he earns ₹7000/- a month. Y’s father broke down after the accident, attempted suicide and gave up work altogether. The family feels hopeless. Y was a responsible young man. He gave his earnings to his mother, helped her pay back loans taken for his sister’s marriage and to build a small house in their village. Their lives were looking up and yet so fragile. In a fraction of a second the accident brought them back to where they started.

The lives of Y and S make evident that they did not receive the head-start that every child must as guaranteed by the State. The young men are living example of millions of young people for whom economic fragility did not go away with the onset of rapid economic growth and development that arrived in India.

Without agency, low in political priority, at the bottom of social structures, children (39 per cent of total population¹) are most vulnerable to the shocks their families and communities experience. Childhoods without adequate facilities for care, protection and development lead young people into adulthood ill prepared and insecure, without much hope for a better life. Across the timeline of a child's life India's data on children discussed in this volume and in this article evidences how childhoods are increasingly being placed in peril.

A Working Definition

For India, as for anywhere else, child protection is dynamic, evolves or regresses based on social, political and economic history and current reality. India is an old civilisation with positive traditions which favour child protection and yet extraordinarily burdened by outdated beliefs and practices that are harmful to members of its society, especially children.

The young population is raring to get ahead. Aware and enabled by technology, eager to participate in a flatter world, young people are held back by a feudal system entrenched in caste, patriarchy and other conventions that perpetuate inequity. Protecting children, keeping them safe is a critical pathway to getting young people prepared to make the desired leap.



The richest 10 per cent of Indians own 77.4 per cent of the country's wealth, bottom 60 per cent, the majority of the population, own 4.7 per cent. The richest 1 per cent own 51.5 per cent., the Gini wealth coefficient in India has gone up from 81.3 per cent in 2013 to 85.4 per cent this year, which shows inequality has risen—Credit Suisse 2018 Global Wealth Report.²



The Economic Survey of India 2017 estimates that the magnitude of inter-state migration in India was close to 9 million annually between 2011 and 2016, while Census 2011 pegs the total number of internal migrants in the country (inter- and intra-state movement included) at 139 million.³



According to CMIE India's unemployment rate in April accelerated to 7.6 per cent, the highest since October 2016, and up from 6.71 per cent in March 2019.⁴



India has very large numbers of poor people who rely on the natural resource base for their livelihoods, with a high dependence on rainfall. By 2020, pressure on India's water, air, soil, and forests is expected to become the highest in the world—World Bank.⁵

WHAT IS CHILD PROTECTION?

Child protection is a set of thoughts, policy, law, and services which anticipate prevent and respond to keep children safe from abuse, harm, violence and exploitation.

Child protection is a subset of the umbrella of child rights, an integral cross cutting set of rights without which other rights cannot be adequately realized.

At the heart of child protection work is change in attitudes, behaviour and eventually societal norms.

Child protection is a constant 'work in progress' towards expanding horizons of what a society considers to be safe and protected childhoods.

Some Results

The Indian Constitution guarantees rights to children as equal citizens on par with adults, and further provides special rights and protections to children recognising their special needs, tender age, and need to develop into citizens who are healthy in mind and body.

India has also ratified the UN Convention on the Rights of the Child in 1992 (UNCRC), and subsequently in 2005 ratified its Optional Protocols on the Sale Trafficking and Use of Children in Pornography, and the Use of Children in Armed Conflict.⁵

The Juvenile Justice (Care and Protection of Children) Act, 2000 (JJA 2000) amended in 2006, stepped up from its 1986 avatar. It sharpened child focus in nomenclature and procedure, brought uniformity in definition of child as all individuals under the age of 18 years, expanded definitions of children in need of care and protection (CNCP) to also include children at risk, brought care, protection, development as primary needs for both children in need of care and protection and children in conflict with law (CICL), and brought the Act on par with provisions of the UNCRC.

The shift from protection of rights of children to child protection happened in the mid-2000s. Recognition of increasing crimes against children (crime data reported in the Crime in India⁶ statistics and reports from CHILDLINE 1098⁷), very low investment in Child Protection (Budget analysis by HAQ: Centre for Child Rights and Government on its own since 2003) and also the World Report on Violence Against Children in 2006⁸, to which India was obliged to submit a response report thereby drawing the government's attention specifically to the issue – all contributed to the interest in child protection. One important step in this direction was the approach paper to the Eleventh Five Year Plan⁹ The Government of India undertook a nation-wide study on prevalence of child abuse in India which was published in 2007.¹⁰ The MWCD published a document titled “India-Creating Protective Environment for Children”,¹¹ which laid the foundation for the introduction of the Integrated Child Protection Scheme (ICPS) in 2009.

Defining Child Protection in ‘India-Creating Protective Environment for Children’ the MWCD in 2006 said:

Child Protection means creation of a protective environment in the home, school, community and society so that children are protected from all kinds of harm and harmful situations. It means providing a safety net for all those children who are more vulnerable than others and who need special care and protection. It must be understood that a child's right to protection is part of each and every other right and is not possible to ensure other rights without ensuring protection.

In 2006, the Department of Women and Child Development (DWCD) under the Ministry of Human Resources and Development (MHRD) was upgraded to a ministry, the Ministry of Women and Child Development (MWCD). The prime intention was to address gaps in State action for women and children for promotion of inter-ministerial and inter-sectoral convergence to create gender equitable and child-centred legislation, policies and programmes.

The subject of child protection was brought within the mandate of new ministry created for women and child development in 2006. Juvenile justice, psychosocial rehabilitation, institutional care, non-institutional care, adoption, CHILDLINE 1098, street children, trafficking of women and girls, adolescent reproductive health, along with related schemes for welfare and rehabilitation were brought under the MWCD. Important issues with serious considerations for child protection such as child labour, disability, substance abuse and de-addiction, mental health of children, continued to rest within the purview of other ministries.

The ICPS was designed to mark a shift from addressing children after they fell out of the protective net to creating a protective environment for children, through the creation of community level child protection structures. It brought most of the existing schemes and programmes that addressed children who had fallen out of the protective net, within its fold. Through this, MWCD articulated

the government's intention for children to be surrounded by a protective environment achieved through collaborative efforts between civil society organisations, communities and the government. Special legislations were enacted and amended to protect children from child marriage, sexual offences, child labour, namely The Prohibition of Child Marriage Act, 2006, The Protection of Children from Sexual Offences, 2012 (POCSO), and The Child Labour and Adolescent(Prohibition and Regulation) Amendment 2016.

An optimistic view suggests that the work thereon was beginnings of an integrated child protection system. In this duration however, despite progressive policy intention, financial allocations for child protection remained limited grossly inadequate hovering around 0.03 per cent over the last 20 years. Consequently, infrastructure, services, and human resource have also remained constantly and severely lacking in implementation.

In the last two decades, civil society grew in understanding undertook several critical interventions towards building capacity, informing policy and programme through research and theory building, enhancement of child protection service delivery through demonstration of good practice. CHILDLINE 1098, incubated as a civil society and government collaboration, was incorporated as a national emergency helpline service for child protection that is now functional in 502 districts across the country.¹² The technique of child budgeting was brought into the country by civil society organisations in 2000. For example, HAQ: Centre for Child Rights led the advocacy for the adoption of child budgeting in the government which was achieved in the Government of India's National Plan of Action for Children 2005.

In the last two decades, civil society grew in understanding undertook several critical interventions towards building capacity, informing policy and programme through research and theory building, enhancement of child protection service delivery through demonstration of good practice.

Civil society led litigation resulted in efforts towards child protection system strengthening, and improved understanding and justice for children. Notable outcomes include securing a ban on the employment of children in circuses, secured by the Bachpan Bachao Andolan (BBA) through a PIL to the Supreme Court, orders in the Sampurna Behura vs Union of India¹³, PIL filed by the Human Rights Law Network (HRLN) for all states and UTs to comply with implementation of the JJA including setting up of JJBs in all districts, training of police and legal aid lawyers by the legal aid service authorities, implementation of ICPS, and set up of State Commissions for Protection of Child Rights. More recently Committees led by the Supreme Court and High Court in the states have been working in collaboration with government, UNICEF and civil society organisations (HAQ: Centre for Child Rights, Centre for Child Rights and the Law, National Law School Bangalore) towards quality jurisprudence and effective implementation of the child protection system.

The 86th Amendment to the Indian Constitution and the insertion of Article 21A made elementary education free and compulsory for children aged between 6-14 years of age via the Right of Children to Free and Compulsory Education Act 2009 (RTE).¹⁴ The subsequent achievement of universal enrolment ensured children under the age of 14 years stay in school and therefore reduced their exposure to protection risks. Evidence of the benefit of the RTE was found in the reduction of child marriage from 58 per cent in the National Family Health Survey (NFHS) Round 3, 2005-06,¹⁵ to 27 per cent in NFHS Round 4, 2015-16.¹⁶

Wide Gaps Still to be Addressed

Low Priority and Traction for Child Protection

There is a dearth of national level data to enable in-depth understanding of the status of child protection. National institutional mechanisms for data collection do not include indicators to measure status of child protection. Child protection is not viewed or understood as requisite for access and effective participation in education, a key determinant of health indicators, access to public services, utilities and entitlements, or a necessary element of a quality childhood. Comments on status of child protection is informed through decipherment of national data sets on health, labour, child marriage, crimes against children, crimes by children, and access to education.

Lack of data, and nationally accepted indicators to measure protection, have left the child protection discourse limited in understanding and reach. The nature of child protection and related work is complex. While curative work may be measured more easily, the success of work on prevention of child abuse and exploitation remains a challenge to measure. In India there has never been interest in a concerted effort either by government, academia, UN agencies, or civil society to work on indicators which can be measured at scale. It is a challenge therefore, to make accurate forecasts for resources required for child protection and even harder to garner support for the work. As a consequence, child protection suffers from low priority and traction in government planning and public attention.

Child Related Data

A look at a limited set of indicators related to health, crime and education helps piece together a social context from which to examine child protection. India's son preference has grown. Nationally, 82 girls die at birth for every 1000 boys born.¹⁷ According to Census of India 2011, Haryana, Punjab, Jammu and Kashmir, NCT of Delhi, Chandigarh, Gujarat, and Rajasthan are among the worst states.¹⁸

Data on crimes against children shows an increase in crimes in general as well as for crimes against children from the previous years. The decadal increase since 2006 is by over 500 per cent.¹⁹ The increase in reporting post implementation of the POCSO 2012 is at least partially responsible for the spike in reporting and must be acknowledged. For every 100 girls 27 marry before the age of 18 years.²⁰ The State has achieved universal enrolment in primary school. Drop out is four per cent in elementary school, rises to 17 per cent in secondary school and drops to two per cent in upper secondary school.²¹ Drop out of Scheduled Caste and Scheduled Tribes students is higher and significantly higher respectively across all levels of education.²²

School attendance substantially drops by around 40 per cent and even lower in classes 9-10 and classes 10-12, showing no significant gender disparity. Reasons for drop out (and also presumably for low attendance) in higher classes include lack of interest in education for both boys (24 per cent) and girls (16 per cent), domestic activities and marriage for girls, economic activities and financial constraints for boys. Class 5 learning levels were found to be lower in 2015 than in 2012.²³ Enrolment in higher education (Grades 9-12 and upwards) in India is in range comparable to Bangladesh, Nepal and Pakistan.²⁴ 10 million children under eighteen years of age of work in India²⁵.

This data is telling of a strongly patriarchal society, with crimes and violence against children on the increase, an education system constrained to keep up in quality, demand and unable to bring large disadvantaged groups on par. Taking into account only drop out after elementary education and no other factor—the entry of unskilled young people into the unorganised workforce would still be in hundreds of thousands. India's complex web of poverty, discrimination and exploitation continues to be reinforced.

The data is telling of a strongly patriarchal society, with crimes and violence against children on the increase, an education system constrained to keep up in quality, demand and unable to bring large disadvantaged groups on par. India's complex of poverty, discrimination and exploitation continues to be reinforced.

Changes in The Legal Environment for Children: Diminishing Child Protection

Since 2015, there have been critical shifts in special laws for child protection namely the laws for juvenile justice, child sexual abuse and criminal law. The intention to protect children and women underpinned the changes.

There have been some critical shifts in special laws for child protection. The narrative that was created worked well to appease an emotionally charged public left hopeless by the lack of implementation of public services for child protection, law and order, and justice. But whether it will result in greater protection for children remains doubtful. Experience has shown that it is only certainty of prosecution and rightful conviction that works- not highly punitive law.

The most substantive change across the legislations was introduction of a regime of severe punishment, 'tough time for tough crime', a deterrent for crimes against women and children. The changes in law were critiqued as ad-hoc not founded in assessment of evidence, failing to address implementation gaps in the system for child protection and justice. They tear away layers of protection from children and shrink spaces for childhood.

Many human rights activists, academics, and child rights practitioners came together in concerted efforts to educate the government about the risk and consequences around their intention to protect children, and women and without adequate consideration of impact on other members of society also including, families, children and women themselves, the very people they set out to protect.

The Criminal Law Amendment Act 2018²⁶ and POCSO Amendment Bill 2019

The Criminal Law Amendment Act 2018²⁷ introduced death penalty for those who rape minor girls under the age of 12 years, and substantially enhanced punishment for rape of girls under 16 years of age.

According to Crimes in India 2017, 90.1 per cent of trials under the POCSO Act were pending.²⁸ Moreover, according to the same report, the conviction rate in cases of child sexual offences is as low as 24 per cent and of 'child rape' (sections 4 & 6 of the POCSO Act and section 376 of IPC) is 28 per cent.

Findings of studies of the implementation of the POCSO 2012, by eminent institutions including The Centre for Child Rights and The Law, National Law School Bangalore, and HAQ: Centre for Child Rights have pointed out that lack of infrastructure, Special Courts, skilled human resource in the law and order and justice system, leads to procedural gaps, faulty investigation, lack of credible evidence, limited facilities for rehabilitation, poor quality free legal aid, stigmatisation of children and their families, compound in high pendency, low conviction, withdrawal of cases, and therefore loss of justice for children.²⁹



A significant finding of the HAQ study was that in majority of cases of child sexual abuse, the perpetrators were known to the child survivors.³⁰ This makes children vulnerable to manipulation, exploitation, threat and therefore they become more reluctant to report the abuse. With enhanced punishment (life imprisonment and death), the reluctance of the child or other care givers/family members to report cases is expected to increase.

The Protection of Children from Sexual Offences (POCSO) Amendment Act, 2019 was notified on 5 August 2019 (Amendment) Act 2019 was notified on 5 September 2019. The Amendment addresses penetrative sexual assault, aggravated penetrative sexual assault, aggravated sexual assault and use of children for pornographic purposes. While the POCSO Amendment 2019 adds to the definitions and grounds for offences mentioned above, it introduces more stringent punishments for certain offences. Key to note among these is the increase in minimum punishment for aggravated penetrative sexual assault from 10 years to 20 years with death penalty as maximum punishment; for penetrative sexual assault on a child below the age of 16 years, minimum punishment has been increased from 7 years to 10 years; and if the child is under 16 years of age, then imprisonment between 20 years to life, with a fine³¹.

The Government would have been best advised to work towards justice for survivors of child sexual abuse by undertaking concrete measures to improve the rate of conviction, pendency, support and rehabilitative services offered to a child victim of sexual abuse.

Juvenile Justice (Care and Protection) of Children Act 2015³²

An outcome of the Nirbhaya case, in the spirit of getting tough on crime was the re-enactment of the juvenile justice law to exclude certain children between the ages of 16-18 years of age accused of committing heinous offences from the absolute protection of the juvenile justice law (Discussed in detail in Chapter 9).

The amendment overrode two Supreme Court Judgements³³ which upheld the constitutionality of the JJA 2000 in so far as it allows all children in conflict with the law to be dealt with under the beneficial juvenile justice system irrespective of the gravity of the offence, data which evidenced that the low numbers of children in conflict with law, who account for four per cent of the total number of crimes did not warrant such a major shift.

The decision of the government ignored findings of brain science research which found that adolescent brains are not matured in formation and structure which leads them to be susceptible to negative influences and peer pressure, less likely to focus on future outcomes, less risk-averse than adults, have poor impulse control, and evaluate risks and benefits differently, all of which pre-dispose them to make poor decisions.

The Justice Verma Committee 2013³⁴ constituted to make recommendations on the Criminal Law Amendment Bill 2013 post the Nirbhaya case, discussed stringent punishment recommended imprisonment for life for those found guilty of raping but did not support awarding death penalty. The Committee also took a view that no child should be kept out of the purview of the juvenile justice system. The Committee spoke of quality implementation of service delivery and justice systems.

The Child Labour & Adolescent (Prohibition and Regulation) Act 1986, Amendment 2016³⁵

33 million children under 18 years of age are engaged in work, accounting for 7 per cent of the total workforce. Of these, 10.1 million are between five-14 years and 22.8 million are between 15-18 years³⁶. Data demonstrates that while child labour in India may have declined since 2001, with such large numbers of children at work the issue cannot be made light of.

In 2016, the child labour law was amended to prohibit employment of children below 14 years in all occupations except where the child helps his family after school hours and during vacations. Children between the age of 15 and 18 years were classified as adolescents and are permitted to work in certain non-hazardous occupations as defined by the Factories Act 1948. The government maintained that the exception emanated from a move to balance between the need for education for a child and reality of the socio-economic condition and social fabric in the country. A new category of children between 15 and 18 years of age was carved out, named 'adolescents' and permitted to work in industries classified as non-hazardous under the Factories Act 1948, a substantially reduced list contained in the schedule of the previous Act, which was then expanded in the rules after demands from experts and activists.

Intent to monitor the situation to ensure that children are not exploited by the exception was articulated by the government. It is a mammoth task given the scale and size of population, and children already in the work force and in need of protection. Track record of low number of complaints and high pendency of cases indicate that the system is unable to cater to the existing burden. Crimes in India 2017 recorded that of the unresolved cases at the beginning of year (335) and the total cases for investigation (728), 46.0 per cent cases were pending.³⁷ Child Labour Task Forces (CLTF) constituted across districts have also been ineffective reporting anecdotally that they are limited by inadequate infrastructure, human resources, and lacking in role clarity (Discussed in detail in Chapter 15).

In recent years due to increased awareness amongst buyers about child exploitation, and international pressure, child labour is increasingly becoming invisible and the location of the work has changed from the more formal setting of factories, to business owners' homes.³⁸ There has also been an increasing involvement of children in the home-based and informal sectors. Further, the definition of family is vague and difficult to prove.

Children have always helped in their families and would have continued to do so. Legitimisation of this phenomenon with no system in place to monitor or manage the exposure of millions of children to risk of exploitation is unnecessary and dangerous. 10 years into the implementation of free and compulsory education for children aged 6-14 years of age, the endeavour should have been towards elimination of children in the workforce completely, guaranteeing secondary and upper secondary education, along with scaled up vocational education.

Child Protection System Remains Broken

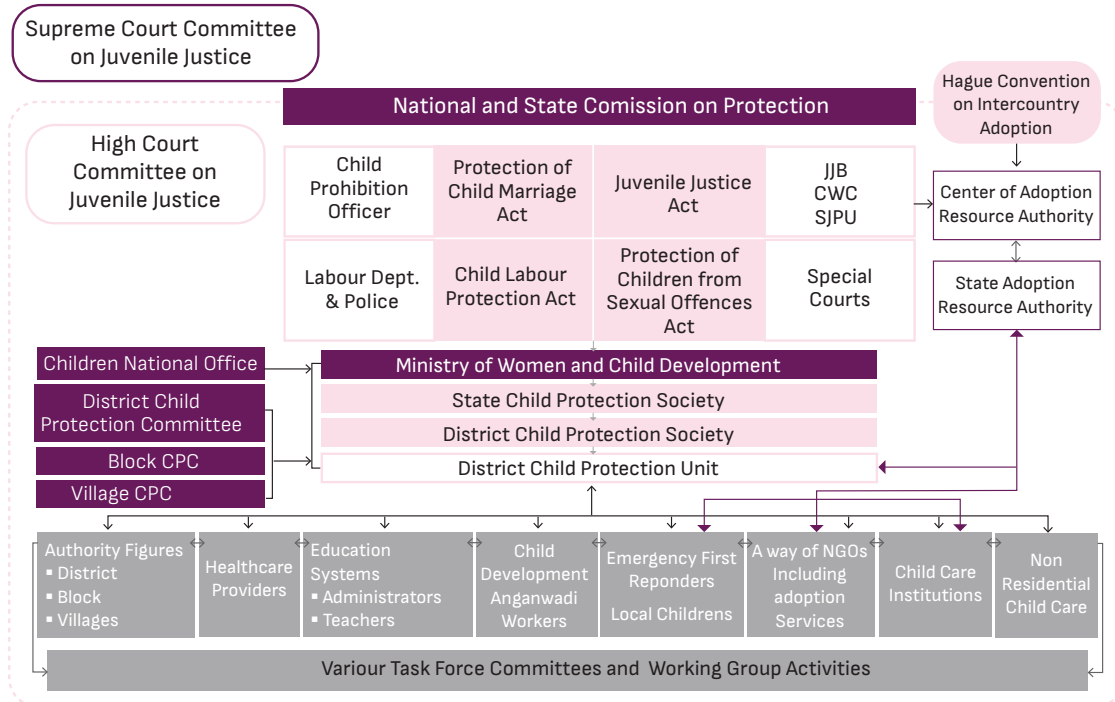
The child protection system in India is characterised by an elaborate legal and policy framework, articulating sound intent, a thick population of structures and services concentrated at state governments and district headquarters which taper to nearly nothing at the block and village level including their urban equivalents where communities, families and children reside. So far, the system has adopted a top down approach, that is tilted towards curative interventions in response to children who have experienced harm.

Since the enactment of the Juvenile Justice (Care and Protection of Children) Act 2000, and the ICPS in 2009, the need for a protective environment, for family support and strengthening, to shift away from institutional care, the addition of preventive interventions towards ensuring the safety and protection of all



An elaborate legal and policy framework, articulating sound intent, a thick population of structures and services concentrated at state governments and district headquarters which taper to nearly nothing at the block and village level including their urban equivalents where communities, families and children reside- forms the child protection system in India. Not surprising that children remain vulnerable and unprotected!

CHILD PROTECTION SYSTEM



children began to make entry into government and civil society parlance presenting an opportunity to revamp, and envision an integrated and comprehensive child protection system. To achieve this requires assessment, investment, and thoughtful consideration of some issues.

- System remains largely curative despite preventive parlance and pressing need:** According to MWCD year-end review report for 2018, there are 8200 childcare institutions (CCI) registered under the JJAAct 2015. ICPS supports approximately 1800 CCIs providing care to 78000 children, while on the other hand sponsorship was provided to 6000 children. Approximately 2000 children were given in adoption. Number of children directly assisted through institutional care exceeds those assisted through family support.³⁹

The demand on CHILDLINE 1098 emergency helpline services increases exponentially with each passing year, registering 13 million calls each year.⁴⁰ The high-volume call data indicates a that large volumes of children are in distress situations, and importantly highlight the missing piece of anticipation and prevention interventions in the community, and for families. There is an urgent and pressing need to take forward preventive work in at the community level in mission mode.

- Child Protection Workforce needs capacities built, rationalisation, and protection:** In 2013 UNICEF based on government data sources estimated the child protection workforce in the country which included 639 persons from state and centre cadres, 7680 at the district (DCPU level), CWC/JJB at the district level comprising 5120 persons, had provided child protection services/assistance to 170000 children.⁴¹ This group considered the 'mid-level cadre' would have grown substantially since then with all states and districts coming on board to implement ICPS.

The CHILDLINE 1098 service in 502 districts currently comprises approximately 7000 persons.⁴² There are a 723 CWC and 702 JJB comprising almost 6000 individuals according to MWCD data for 2018.⁴³ In addition, from the police force, there are juvenile police officers, CCI staff, teams from the District Legal Service Authority (DALSA), medical practitioners, special units including SJPU, AHTU, CLTF who are charged with child protection.

It is a vast and complex network comprising those fully charged with child protection to those for whom child protection is a small portion of work. Majority of the core child protection workforce is informal, with no security, incentive or protection to their employment.

The child protection workforce needs a comprehensive review, scale up and strengthening. There is need for systematic and systematised capacity building, role clarity, sensitivity, infrastructure and financial support to enable them to function effectively.

Appreciating that child protection work is challenging given the size, diversity, and scale of country and population, it must be said that the progress of work does not keep pace with stated intent. There is need to re-examine the vision for the child protection system through study of the nature and scale of the task at hand.

Child protection monitoring indicators, expanding the scope of the system to include community led initiatives for child protection, workforce requirement in terms of technical competence, quantity, estimates of the cost of a workforce, budget provisioning for services, cost benefit analysis of adopting a preventive approach, building traction for child protection, partnerships and convergence must form integral components of assessment of requirements of an optimal child protection system for children in India. Child protection workers need to belong in a system which accords priority for the mandate, which hones skill and expertise, provides a growth path, and protection.

- **Village Level Child Protection Committees (VCPC), great potential accompanied by zero budget, rests on paper:** ICPS introduced a non-formal structure of village duty bearers and community members to be the link between families, communities and the child protection system.⁴⁴ The role of the VCPC can potentially be transformational in bringing change at levels closest to children—the community and family. It includes awareness and dialogue for behaviour change, keeping watch on the situation of children in the community, tracking services for children in the community, follow-up of cases and linking children to the system.

With the necessary investment in strengthening of capacities, the VCPC can play a critical role in keeping children safe at home, in the communities, preventing harm and linking children to the system when necessary. The VCPC must be considered an integral part of the child protection system and grow into vibrant platforms owned by the community to lead thought shift, dialogue and action for child protection.

While the work of VCPC must remain voluntary and community led, their capacity building and facilitation at a very large scale would necessarily require smart deployment of substantial resources provided for within the child protection services or ICPS. Civil society organisations including Child in Need Institute (CINI), HAQ: Centre for Child Rights along with its partner organisations in the states⁴⁵, Leher, Save the Children and partners, Plan International and partners, UNICEF and Partners, have demonstrated qualitative pieces of work in this area over the last 10 years, some even leveraging technology and use of interactive audio-visual content to educate and orient communities which must be scaled up through capacity building institutions of the State.

- **Lack of knowledge and reach of the child protection system to community and vice versa:** Child protection district need assessment studies which are intended to be the basis on which ICPS planning at the district level takes place.

The findings of studies in 8 districts across 3 diverse states found limited commonality between data provided by CWC and child protection issues of concern identified by communities for similar periods of time.⁴⁶ Communities identified corporal punishment, sexual harassment, bullying, disability, substance abuse.



It is unfortunate that majority of the core child protection workforce is informal, with no security, incentive or protection to their employment. The result is a shaky child protection edifice.

Urban and rural areas had unique vulnerabilities, some chronic and age old visibly invisible (seasonal migration; gender discrimination; child labour among others); some acute and emergency like (drought; substance abuse, lack of access to sanitation, exposure to domestic violence, sexual harassment, all exacerbated by cramped urban living).

Other than a few cases of sexual abuse, CWCs in 8 districts did not address any such cases as were identified by communities. Further, across all 8 districts, other than the police, awareness of structures, services for child protection was negligible (6 per cent), evidencing the fact that communities are not engaging with the child protection system and vice versa.

Funding Dynamics and Patterns for Child Protection

For a very long time, the biggest challenge faced by the child protection sector was the meagre share of the money it received in the national and the state budgets. This was one of the major planks used to argue for a separate and dedicated scheme for preventing and protecting children from harm.

FUNDING AND ITS DIVERSIFIED SOURCES

According to the India Philanthropy report 2019, the overall social sector funds have grown at a rate of 11 per cent over the past five years.⁴⁷ There are four major sources through which social organisations acquire funding. First, the government, the largest contributor (6 per cent of GDP) playing a critical role as it allocates a substantial percentage of the annual national budget for the social sector and development initiatives; the second source includes donations from individuals and high net individuals (HNIs) led by a few individuals currently contributions are about 60 per cent of the total private funding, estimated at Rs 43,000 crore. The third source of funding is international aid, channelled through unilateral or bilateral agencies. Foreign contributions declined by about 40 per cent. The fourth source is Corporate Social Responsibility (CSR) funding. The CSR budget outlays of the domestic corporations and contributions of corporate charitable trusts, combined, have grown at a rate of 12 per cent between FY2014 and FY2018, and they contributed approximately INR 13,000 crore to social sector funding in FY2018.

In India, almost 80 per cent of donations go to the education sector; the remaining sectors being rural development, health care and environmental protection.⁴⁸ This trend can be observed even in the union budget where education (2.25 per cent) and health (0.82 per cent) have been and continue to be the largest priorities in the budget for children (3.24 per cent). The government's allocation for child protection services stays at 0.03 per cent of the budget over 20 years. The 107 per cent increase in allocation for the ICPS in 2019-2020 is very welcome. It is also heartening to see that 98 per cent of the budget allocated in 2017-18 was spent in the same year (Actual Expenditure (AE) figures). In all probability the cost of child protection has gone up over the years with the cost of every other service escalating. Yet, for now, there is a feel-good factor in the 2019-20 budget for child protection services finally meeting requirements for ICPS stated in the Eleventh Five Year Plan.⁴⁹

While HNIs and CSR have made contributions to child protection work, there is no published data on the quantum of the contribution of private funding for child protection. The comment below is made based on perception, discussions and observations of patterns over the last decade.

The politics of funding highlights how the 'small players' are marginalised by the rise of international organisations in the recent periods.

Needless to say, the primary responsibility of protecting children is that of the government. However, NGOs and other civil society organisations – small and big, have always played a critical role as implementers, as technical experts as well as 'monitors' holding governments accountable.

As foreign funding began to decline, many international funding agencies/ International Non-government organisations (INGOs) registered themselves as domestic agencies and began to undertake domestic fund raising which compelled them to take up direct implementation work themselves. INGOs are more management systems oriented better equipped to raise funds than their smaller domestic counterparts. It ended up shrinking the pool of funds for small domestic organisations with limited capacity to raise funds, and who erstwhile depended on the funding agencies (now turned implementers) for money.

This is fast changing with the role international organisations have begun to play. This phenomenon brought the funding agencies in a competition of sorts with domestic NGOs they would earlier fund and the marginalisation of the domestic organisations. This process has weakened the capacities of domestic civil society organisations and their work. Further, the volume of the spends of the large agencies creates perception that they are doing the major work, and they end up coveting a large part of policy discussion spaces.

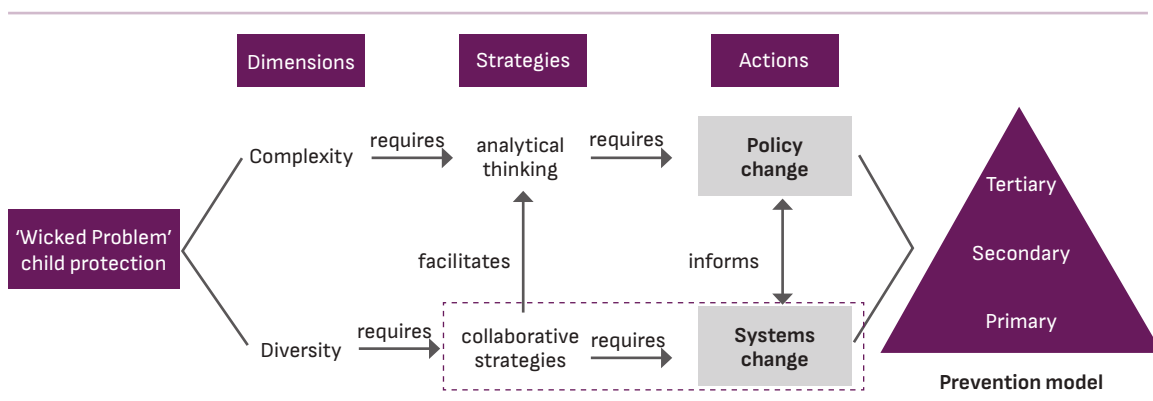
It is also observed that to eliminate risks around funding of domestic NGOs perceived to be weak in management systems, funding agencies both corporate and private make grants to each other. These kinds of arrangements favour a status quo environment in which large organisations tend not to raise questions to each other, or with regards to issues that affect children.

Inverting the Pyramid for Child Protection

Australia's Research Alliance for Children and Youth (ARACY) in a research report, 'Inverting the pyramid: Enhancing systems for protecting children', examines factors that could facilitate a shift across child protection systems towards the prevention of child abuse and neglect thereby reducing demand on tertiary child protection services.⁵⁰ The research aspires to Australia's public health model of prevention and assumes agreement that the best way to protect children is to prevent child abuse and neglect from occurring in the first place. The model of prevention would include interventions—universal or primary (for all children), secondary (targeted at those vulnerable or at risk), tertiary (for those already harmed).

In the diagrammatic representation below, the ARACY research study offers a conceptual framework, which describes child protection as a 'wicked' problem further breaking up 'wicked' into two dimensions, complexity (resistant to solutions) and diversity (involving numbers diverse stakeholders). Child protection requires both dimensions to be addressed to arrive at effective systems and policy change that are interlinked and reflective of ground reality.

In India, child protection issues present themselves in plain sight—on the streets, in the community, at home, in public spaces, public services. The work is complex, bringing head on collision with politics of caste, class, poverty, power, gender, ability, geography and access among others. Diverse stakeholders including children, families, communities, and government need to come together in a collaborative approach to find solutions.



When the discussions began in 2007 about creating a child protection framework in India, this was exactly the idea—to catch the children before they fell out of the protective net by creating preventive mechanism wherever they are. This was based on a convergence model of existing structures and services. But, by the time the ICPS got formalised, it was no longer what it had been envisaged to be.

Currently, almost all of India's child protection work takes place at the tertiary level, with focus on children who have already been harmed/violated, thereby inviting reflection on the conceptual framework mentioned above. Local governance through the Panchayati Raj system, strong social networks of community and family present viable resources and opportunity for child protection interventions at the primary level. There can be no doubt that for India too, the child protection system needs to be turned on its head. The major thrust must be towards preventive interventions for all children, with children themselves, their families and communities at the helm of dialogue and action.

Emerging Child Protection Issues – The System Must Gear Up

Child protection issues could be looked at as chronic issues, that have been in existence for years, and emerging acute child protection issues, an outcome of 21st century living, which must be brought into focus of child protection policy, laws and programme implementation.

Children's unrestricted and unsupervised access to the internet -Vulnerability to Online Abuse:

According to UNICEF, one in three internet users worldwide is a child. There are currently about 400 million Internet users in India. Most of the growth in internet access is driven by mobile internet use. Worldwide, 71 per cent of people in the age group of 15-24 are online.⁵¹

In India, it is estimated that about 134 million children have mobile phones. The number is growing by leaps and bounds. This phenomenal growth will provide opportunities to the children of the country to access and share useful material for learning purposes. But on the other hand, lack of digital literacy and online safety measures will also expose these children to hazards of cyber bullying, sexual predation and other crimes.⁵²

In 2012, Telenor India did a study on child online safety in 12 countries and found that children in India are in the highest risk category due to a combination of increased access enabled by affordable Internet and smartphones, and low resilience with parents and children lacking the knowledge of how to safeguard themselves against different cyber threats.⁵³

A study commissioned by Microsoft in 2012 ranked India third for high online bullying rates (after China and Singapore) among 25 countries where the survey was conducted.⁵⁴

What begins as entertainment (usage of apps like Whatsapp, snapchat, Facebook etc. gaming apps) ends up as an addiction, with children glued to the screen for hours together. This affects their health, sleep cycle, food intake, studies, interpersonal communication.⁵⁵ The unfiltered, unsupervised use of many of apps (blue whale challenge⁵⁶, Tik-tok, PUBG etc.) sometimes puts the child in a vulnerable position – egging them to perform and upload videos/ perform tasks, divulge personal information (location details, provides access to media files, photographs on the phone), cyberbullying, blackmail etc. Use of smartphones can lead children to engage in inappropriate behaviours. They can easily check sites that show harmful and shocking content. This can result in leaving the child scared and confused and also influence their daily interactions/ thought process etc. Exposure to this material at a young age can also result in body image issues. Texting and sending inappropriate pictures has also become common among teenagers.⁵⁷ Internet online games are increasingly violent and trivialize violence and encourage violent behaviour in children.

NIMHANS sees no less than six children (aged 14-20 years) a week at the Services for Healthy Use of Technology (SHUT) clinic at NIMHANS.⁵⁸ Parents across socioeconomic divides are unaware of what

the risks their children face, even those who think they are in a position to monitor their children are in fact unable to do so.

The 2014 report of the Parliamentary Committee on Information Technology recognised that the online bullying of children by their peers was probably far more common than other offences. As per the Teens, Tweens and Technology Survey commissioned by Intel Securities in India in 2015, 43 per cent of children active on social media claimed to have witnessed cruel behaviour on social networks, while 52 per cent of children indicated that they had themselves bullied people over social media.⁵⁹

While access to ICT and participation in the online environment are rightly priorities for the Indian Government, online risks have received relatively less attention. Cybercrime statistics focus on commercial online fraud and political radicalisation. The risks of online abuse and exploitation of children have received much less attention and are not included in the NCRB statistics as a separate category. India's ability to protect children from online abuse and respond effectively to the dissemination and consumption of online child sexual abuse materials (aka child online pornography) falls far short of meeting existing needs. In fact, there is a widespread lack of awareness among parents, teachers, the police and policymakers of the growing and ever-changing risks of online abuse and exploitation of children. Legislation, mechanisms and services are inadequate to respond to these threats and have to be updated and strengthened.⁶⁰

Recognising the increasing menace of online abuse the Protection of Children from Sexual Offences (POCSO) Amendment Act 2019 has addressed this in some detail.⁶¹ Under the Act, a person was already held guilty of using a child for pornographic purposes if he uses a child in any form of media for the purpose of sexual gratification. The Act also penalised persons who use children for pornographic purposes resulting in sexual assault. The Amendment now additionally defines child pornography as any visual depiction of sexually explicit conduct involving a child including photograph, video, digital or computer generated image indistinguishable from an actual child. It has also enhanced the penalties for certain offences in this category (Table 1)

TABLE 1: PUNISHMENT FOR OFFENCES FOR USING CHILD FOR PORNOGRAPHIC PURPOSES⁶²

Offence	POCSO Act, 2012	2019 Amendment
Use of child for pornographic purposes	Maximum: 5 years	Minimum: 5 years
Use of child for pornographic purposes resulting in penetrative sexual assault	Minimum: 10 years Maximum: life imprisonment	Minimum: 10 years (in case of child below 16 years: 20 years) Maximum: life imprisonment
Use of child for pornographic purposes resulting in aggravated penetrative sexual assault	Life imprisonment	Minimum: 20 years Maximum: life imprisonment, or death.
Use of child for pornographic purposes resulting in sexual assault	Minimum: Six years Maximum: Eight years	Minimum: Three years Maximum: Five years
Use of child for pornographic purposes resulting in aggravated sexual assault	Minimum: Eight years Maximum: 10 years	Minimum: Five years Maximum: Seven years

Note: Punishment for using a child or children for pornographic purposes resulting in any form of sexual assault is in addition to minimum five years for use of child for pornographic purposes.

Substance Abuse: Onset of substance abuse during the formative years interferes with academic, social and life skills development, and warrants both primary and secondary prevention.⁶³ In spite of a serious threat posed by child substance use and presence of a large proportion of the young, substance use among children has remained grossly under-researched in India, limited to sporadic studies at a local or regional level. Substance use among youth is uniquely associated with an increased risk

of psychiatric disorders, e.g. depressive disorders, anxiety disorders, attention deficit hyperactivity disorder and conduct disorders. Further, behavioural addictions, e.g. internet gaming disorder, are also increasing in this age group as reported from western settings.⁶⁴

According to a study by the National Commission for Protection of Child Rights (NCPCR) in 2013 on the pattern, profile and correlates of child substance, it was found that the problem of substance use among children is not confined to metropolitan areas as is often perceived; Tobacco (83.2 per cent) and alcohol (67.7 per cent) were the most common substances ever used followed by cannabis (35.4 per cent), inhalants (34.7 per cent), pharmaceutical opioids (18.1 per cent), sedatives (7.9 per cent) and heroin/smack (7.9 per cent). Use of injectable substances was reported by a significant proportion (12.6 per cent); The mean age of onset was lowest for tobacco (12.3 years) followed by onset of inhalants (12.4 years), cannabis (13.4 years), alcohol (13.6 years), proceeding then to use of harder substances -opium, pharmaceutical opioids, heroin (14.3-14.9 years) and then finally use of substances through injecting route (15.1 years). While tobacco and inhalants were used almost on a daily basis, several other substances were being used on less than daily or intermittent basis in past month (17 days- cannabis, 16 days-opioids/ sedatives/ injectable and 13 days –alcohol).⁶⁵

NCPCR also found tobacco and alcohol use was higher among those living at home compared to those living on the streets. This difference was more prominent for alcohol. Of the children living at home or on streets, about 18 per cent and 29 per cent respectively indulged in sexual behaviour under the effects of substance, 16.9 per cent and 20 per cent indulged in sexual behaviour in exchange for either substances or money.

Nearly half experienced physical and psychological problems related to substance use and a large proportion reported legal problems due to substance use – 82.4 per cent reported having close contact with friends who use substances and 67.7 per cent had never sought any help for substance use problems. About 43.8 per cent did not have a problem due to substance use nor needed help.⁶⁶

A study by the Delhi Commission for Protection of Child Rights (DCPCR) on substance abuse by children showed that 100 per cent of the children in conflict with the law were drug abusers, 95.5 per cent of them staying in childcare institutions were on drugs and 93 per cent of street children consumed narcotics. The study also said 88 per cent of the children consumed drugs due to peer pressure.⁶⁷

There are severely limited facilities for rehabilitation of children and youth who were addicted. An information portal for de-addiction services (deaddictionservices.in) in the country, states “Currently, only 33 per cent of the 580 centres listed on our site offer youth de-addiction. This statistic must change if India hopes to save its youth.”⁶⁸

As was sought by NGO Bachpan Bachao Andolan in its PIL to Supreme Court in 2014, on which the Supreme Court in 2018 placed responsibility on the AIIMS on an urgent basis to formulate a national action plan for children addicted to drugs and other substances abuse including all issues of prevention, identification, investigation, recovery, counselling and rehabilitation.⁶⁹ BBA had also sought creation of model syllabus on ill-effects of drugs and substance abuse.

Dire need for relevant skills and job options for young people: Schools do not prepare children/ youth for entrepreneurship, they all go for jobs, and the job market does not absorb even 30 per cent of them.⁷⁰ More than eight million jobs are required every year for India to keep its employment rate constant, as its working-age population (above 15 years) is increasing by 1.3 million every month, a new study has found.⁷¹

The 2012 University of Pennsylvania study, found that there is a significant mismatch between student aspirations and the skill requirements of Indian industry.⁷² Almost 50 per cent of those respondents who specified a career said they would like to work in sectors other than those identified as high growth sectors by the NSDC. The construction sector has been projected to create almost 50 million jobs by 2022 – yet only 0.3 per cent of respondents said they aspire to work in this sector. Students

may have limited awareness of the various career progression opportunities in these sectors and may associate them with unskilled roles or jobs with low prestige.

Young people without a real pathway towards gainful employment, bright, young, fit and with time in hand and nothing to do are fertile ground for negative influences such as drug and substance abuse, gambling, gangs and violence, sexual violence, theft, and religious radicalisation to name some. Low self-esteem, frustration, resentment, and depression are also likely consequences. Unorganised sector irregular work continues to thrive for millions, perpetuating endless cycles of poverty and exploitation.

Sex education for young people: Sex education is not a subject taken up with seriousness with children in school or at home in the community. Most public and private schools in India do not provide any kind of sexuality education. The few schools that do, focus on health and hygiene in those classes. A study⁷³ shows that a majority of Indian parents also do not discuss sexuality with their children. This is because the family's conservative social fabric does not allow for an open space wherein conversations about issues related to sexuality can be initiated. And since the adults did not receive sexuality education themselves, and do not have a culture of discussing their own sexuality issues with others, they fail to see the need for formal comprehensive sexuality education. There is also a common concern that these 'unnecessary' talks will disrupt the social order or affect family values and culture that has been held strongly for all these years. Another common criticism of sexuality education is that it teaches youngsters how to have sex, thus allowing and even encouraging them to engage in sexual activity.

A study conducted by World Health Organization (WHO) shows that sexuality education actually delays the start of sexual activity, and encourages safe sex practices. Comprehensive Sexuality Education is much more than sex education: it focuses on the individual, their identity and sexuality. It covers the physical, biological, psychological and social aspects of a person's being and sexuality. It covers issues like bodily changes and differences, and relationships with other youngsters, teachers, and society at large, to discussing important social issues like bullying, abuse, infections, and breakups. And yes, it also provides information about sex along with the importance of consent and safety, all in age and stage appropriate terms.⁷⁴

Sex and sexuality education is an essential life skill. In an environment where crimes against women and children are increasing, where there is also an apparent increase in cases of young people eloping, and where the patriarchal system remains intact, sex education will enable young people deal with their sexuality maturely, stay physically and mentally healthy, make responsible and informed decisions, and also develop mutual respect for themselves as well as other people across the gender spectrum.

Need for child protection system to deliver for children from higher socioeconomic families:

It is common knowledge that almost all cases of children in the child protection system are those of children from poor and less educated families. However, a new trend of cases from higher socioeconomic families have been finding their way into the system.

While there is little published data, the comment is informed by anecdotal information gathered from media, first-hand requests for help, and the work of peer NGOs. Custody battles between parents seeking divorce, sexual abuse including incest, online child abuse, children displaying violent behaviour, children abusing drugs and other contrabands, children accused of offences like murder, rape, underage drivers, hit-and-run, circulation of videos of sexual activity with peers/partners – are also issues that affect middle class and rich children.

The system is in habit of delivering services in a manner which poor families with limited choices accept more readily. However, it is observed that the system can be reluctant, unprepared and challenged by cases of children from more elite families. Patriarchy thrives in affluent families. There is much shame, stigma, fear of losing the breadwinner, loss of name in society, economic dependence of women, unwillingness to accept bare bones frill-less government services. Characteristic of these cases

is dithering, withdrawal, search for quick fix solutions on one hand and desperate families going from pillar to post unable to get qualitative assistance for their children on the other.

The child protection system must deliver for all children. If the system geared itself to deliver to more affluent children, it would only improve in quality. Overall public interest, profile and traction for child protection would also increase.

Urban Poor Children – A Silent Emergency

India has an urban population of 377.1 million (31 per cent), of which 34 per cent (128476879) are children below the age of 18 years.⁷⁵ In comparison to 2001, the number of children (0-6) in urban areas has increased by 10.3 per cent while in rural areas it has decreased by 7 per cent.⁷⁶

While the demographic dividend of India (over 65 per cent of the population is below the age of 35 years, and 39 per cent is 18 years or below) is often hailed as the key to the future growth of the country, an inconvenient truth is that more than 8 million children under six years live in slums. That is more than the combined population of the five north-eastern states: Sikkim, Arunachal Pradesh, Nagaland, Manipur and Mizoram.⁷⁷

Several child protection issues rise with growth of cities. Crimes in India 2017 records 19,544 crimes against children in metropolitan cities in 2017 (Table 4B.1). There has been a 2.4 per cent increase from 2016. Of the 19 cities recognized by NCRB, Delhi (6844) and Mumbai (3,790) record the highest crimes against children.⁷⁸ Kidnapping and abduction of children accounts for 56.93 per cent of the crimes against children.⁷⁹

It is estimated that approximately 50 per cent of the Indian population will reside in urban areas by 2030. Currently it is estimated that there are 81 million urban poor living below the poverty line. Urban child sex ratio at 902/1000 stands lower than the 919/1000 for rural India. Urban poor childhood mortality indicators are far worse than the urban average.

A child protection district needs assessment study carried out in suburban Mumbai in 2017 whose findings are enumerated below paints a picture of what urban poverty looks like for children.⁸⁰ Percentage of communities which identified child protection issues as prevalent were: substance abuse 97 per cent, bullying 97 per cent, corporal punishment 96 per cent, negative impacts of exposure to technology and internet 95 per cent, sexual harassment 87 per cent, disability 75 per cent, Involvement of children in gangs 60 per cent, neglect 74 per cent, organised drug trafficking 47 per cent, early marriage 37 per cent, teenage pregnancy were some other issues reported to be prevalent in communities.

In more than 50 per cent communities it was reported that children work in the 10-15 years age group (which also correlates with the age at which children tend to drop out of school in class 6-10). The study found that, children are forced to make unfair alterations to their daily routines for inadequacies in basic amenities (giving up on study and play time to stand in line to fetch water) or to protect themselves from danger when accessing these amenities (girls avoid use of community toilet or limit their movement in the evening and night to evade being sexually harassed). Inadequate/not proximate play space was another issue reported, pushing children to play in spaces around them (include roads/building by-lanes, construction sites etc.) which make them vulnerable to accidents/ injuries etc.



It is estimated that approximately 50 per cent of the Indian population will reside in urban areas by 2030. Several child protection issues rise with growth of cities. Crimes in India 2017 records 19,544 crimes against children in 2017.

Issues prevalent in communities were not found in the data provided by the CWC. The findings also pointed out that the child protection system is underutilised by communities who seldom made complaints on child protection issues and mostly remained unaware about the child protection system (CWC/SJPU/ JJB/CPC-below 5 per cent, Childline 30 per cent). Other than Mid-day meal, Jaccha Baccha Card and ICDS services, social protection schemes for children and families were also grossly underutilized.

Most studies on protection of urban children, highlight that children are left out of urban planning where such takes place.⁸¹ In the metropolitan cities complex urban structures (a web of Commissionerate, municipalities, state governments) super imposed over local self-governance structures are very hard to navigate through for child protection because there is no articulation for children's safety and protection in local planning and policies. The politics and scarcity of land, the economic struggles for survival, are grave. What urban poor children experience as normal course of life must be considered a silent emergency, almost a crime and needs to be acted upon on an urgent basis.



There is a serious threat posed by substance abuse among children and adolescents. This uniquely associated with an increased risk of psychiatric disorders, e.g. depressive disorders, anxiety disorders, attention deficit hyperactivity disorder and conduct disorder. Further, behavioural addictions, e.g. internet gaming disorder, are also increasing in this age group.

Conclusion and Questions

Nothing in this chapter could be considered a new finding for any child protection practitioner, academic, or duty bearer observing ground reality. The old arguments of children's lack of political agency, patriarchy, lack of a convergent approach in addressing protection of children, budget constraints, limited technical capacities, inadequate implementation, dearth of child protection workforce, lack of indicators for measuring protection, public apathy and disengagement, systematic and structural flaws in policy and implementation due to which disadvantaged groups in society continue to lag in development, still remain core issues.

Perhaps the question to ask is what can be changed in current approaches. Are there less orthodox approaches to break the old stalemates? Can young people themselves be protagonists in struggles for child protection at scale? Can data be generated to measure child protection? Can internet connectivity and new age media facilitate dialogue? What kind of conversations need to be had? How can funding issues for child protection be addressed? Can child rights issues be seen in isolation? What can be done to bring children's issues to the front of human rights and political struggles?

Child protection is a critical cross-cutting area of intervention towards giving young people a secure and firm footing they need for fulfilled childhoods and entry into adulthood prepared with skills to participate on equal footing in society and economy. A regroup and reflection is imperative.

Endnotes

- 1 Census 2011 - http://www.censusindia.gov.in/2011census/Age_level_data/Age_level_data.html Last accessed on 9 October, 2019
- 2 <https://www.weforum.org/agenda/2017/10/india-has-139-million-internal-migrants-we-must-not-forget-them/> Last accessed on 9 October 20
- 3 <https://www.livemint.com/industry/human-resource/india-s-april-jobless-rate-accelerates-to-7-6-cmie-1556801343684.html>, <https://in.reuters.com/article/india-economy-jobs/indias-april-jobless-rate-rises-to-7-6-percent-cmie-idINKCN1S816Q>, Last accessed on 4 October 2019
- 4 http://web.worldbank.org/archive/website01291/WEB/0__CO__78.HTM Last accessed on 4 October 2019
- 5 National Human Rights Commission, 2006, Children in India and their Rights, Delhi. <http://nhrc.nic.in/sites/default/files/ChildrenRights.pdf>, Last accessed on 9 October 2019
- 6 National Crimes Records Bureau (MHA),2016, Crimes in India, Delhi <http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/NEWPDFs/Crime%20in%20India%20-%202016%20Complete%20PDF%20291117.pdf>, Last accessed on 4th October, 2019
- 7 CHILDLINE India Foundation, 2018, CHILDLINE Calling...Is India Listening? An analysis of calls to 1098, volume XI. <https://childlineindia.org.in/pdf/Childnet-Volume-11.pdf>, Last accessed on 9 October 2019
- 8 <https://www.unicef.org/violencestudy/l.%20World%20Report%20on%20Violence%20against%20Children.pdf> Last accessed on 30 August 2019
- 9 Ganguly, Enakshi and Razia Ismail Abassi, 2005. Ensuring child protection Approach to the Eleventh Plan. Paper prepared for the Planning Commission and Institute for Human Development
- 10 Study on child abuse, India, 2007, Ministry of Women and Child Development, Prayas and UNICEF.
- 11 Ministry of Women and Child Development. 22 July 2006. Government of India.
- 12 MWCD, 2019, Annual Report 2018-19, Delhi. <https://wcd.nic.in/sites/default/files/WCD%20ENGLISH%202018-19.pdf>, Last accessed on 4 October 2019
- 13 Supreme Court of India. Writ Petition (Civil) No. 473 Of 2005
- 14 <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-eighty-sixth-amendment-act-2002>, Last accessed on 4 October 2019
- 15 Ministry of Health and Family Welfare,2007, NFHS 3 (2005-06) http://rchiips.org/NFHS/NFHS-3%20Data/VOL-1/In-dia_volume_1_corrected_17oct08.pdf, Last accessed on 4 October 2019
- 16 Ministry of Health and Family Welfare,2017, NFHS 4 (2015-16). <http://rchiips.org/NFHS/NFHS-4Reports/India.pdf> Last accessed on 4 October 2019
- 17 Central Statistics Office, Ministry of Statistics and Programme Implementation, 2019, Women and Men in India (A statistical compilation of Gender related Indicators in India) 2018, Delhi. http://www.mospi.gov.in/sites/default/files/publication_reports/Women%20and%20Men%20in%20India%202018.pdf Last accessed on 4 October 2019
- 18 Central Statistics Office, Ministry of Statistics and Programme Implementation, 2019, Women and Men in India (A statistical compilation of Gender related Indicators in India) 2018, Delhi. http://www.mospi.gov.in/sites/default/files/publication_reports/Women%20and%20Men%20in%20India%202018.pdf Last accessed on 4 October 2019
- 19 <https://inbreakthrough.org/an-analysis-of-violence-against-women-and-children/> Last accessed on August 30, 2019
- 20 The NFHS4 reports a decline in child marriage to 27 per cent. – The National Family Health Survey 4 (2015-16). <http://haqrcr.org/publication/prevention-child-marriage-impact-girls/>, <http://rchiips.org/nfhs/NFHS-4Reports/India.pdf> Last accessed on 30 August 2019
- 21 <https://www.prsindia.org/policy/vital-stats/overview-school-education-india> Last accessed on 30 August 2019
- 22 <http://www.dise.in/Downloads/Publications/Documents/U-DISE-SchoolEducationInIndia-2015-16.pdf> Last accessed on 30 August 2019
- 23 <https://www.prsindia.org/policy/vital-stats/overview-school-education-india> (Last accessed on 30 August 2019) <https://www.livemint.com/Education/k1ANVHwheaCFWCupY3jkFP/Trends-in-school-enrolment-and-dropout-levels.html>, NSSO (71st round) Last accessed on 30 August 2019
- 24 https://mhrd.gov.in/sites/upload_files/mhrd/files/statistics/ESG2016_0.pdf Last accessed on August 30, 2019
- 25 Census 2011 - http://www.censusindia.gov.in/2011census/Age_level_data/Age_level_data.html Last accessed on 30 August 2019
- 26 Extracted from joint submissions to parliamentarians by the ProChild network based on research studies on implementation of the POCSO Act by the HAQ: Centre for Child Rights and the Centre for Child Rights and Law, National Law School Bangalore supported by UNICEF, Tata Trusts and Others.
- 27 The Criminal Law (Amendment) Act 2018, https://mha.gov.in/sites/default/files/CSdivTheCriminalLawAct_14082018_0.pdf Last accessed on 9 October 2019
- 28 National Crimes Records Bureau (MHA),2019, Crimes in India 2017, New Delhi <http://ncrb.gov.in/StatPublications/CII/CII2017/pdfs/CII2017-Full.pdf>, Last accessed on 24th October, 2019. Cases pending trial at the end of the year = 84,143 Total cases for trial = 93,423 (Table 4A.5)
- 29 <https://www.haqrcr.org/new-at-haq/national-consultation/>, Last accessed on 9 October 2019
- 30 HAQ: Centre for Child Rights. 2018 Children's Access to Justice and Restorative Care – Fact sheets. <http://haqrcr.org/publication/childrens-access-to-justice-and-restorative-care> Last accessed 30 August 2019
- 31 <http://www.prsindia.org/billtrack/protection-children-sexual-offences-amendment-bill-2019-0>

- 32 The Juvenile Justice (Care and Protection) Act 2015. <http://cara.nic.in/PDF/JJ%20act%202015.pdf>, Last accessed on 9 October 2019
- 33 Salil Bali vs Union Of India & Anr on 17 July, 2013. Writ Petition (C) NO. 10 OF 2013 and Dr. Subramanian Swamy And Ors vs Raju Thr. Member Juvenile Justice on 28 March, 2014 Criminal Appellate Jurisdiction Criminal Appeal No. 695 Of 2014 (Arising Out of SLP (Crl.) No.1953 of 2013)
- 34 Justice J.S Verma, Justice Leila Seth and Gopal Subramaniam. January 23, 2013. Report of the Committee on Amendments to Criminal Law, 2013.
- 35 The Child Labour (Prohibition and Regulation) Amendment Act 2016. https://labour.gov.in/sites/default/files/THE%20CHILD%20LABOUR%20%28PROHIBITION%20AND%20REGULATION%29%20AMENDMENT%20ACT%2C%202016_0.pdf, Last accessed on 9 October 2019
- 36 Census of India 2011 http://www.censusindia.gov.in/2011census/Age_level_data/Age_level_data.html Last accessed on 4 October 2019
- 37 National Crimes Records Bureau (MHA), 2019, Crimes in India 2017, New Delhi. <http://ncrb.gov.in/StatPublications/CII/CII2017/pdfs/CII2017-Full.pdf>, Last accessed on 24th October, 2019
- 38 <http://unicef.in/whatwedo/21/child-labour> Last accessed on 30 August 2019
- 39 <http://pib.gov.in/newsite/PrintRelease.aspx?relid=187560> Last accessed on 30 August 2019
- 40 CHILDLINE India Foundation, 2018, CHILDLINE Calling...Is India Listening? An analysis of calls to 1098, volume XI, <https://childlineindia.org.in/pdf/Childnet-Volume-11.pdf> Last accessed on 9 October 2019
- 41 <https://unicef.in/Whatwedo/20/Child-Protection-Systems> Last accessed on 4 October 2019
- 42 MWCD, 2019, Annual Report 2018-19, Delhi. <https://wcd.nic.in/sites/default/files/WCD%20ENGLISH%202018-19.pdf> Last accessed on 4 October 2019
- 43 <https://pib.gov.in/newsite/PrintRelease.aspx?relid=187560> Last accessed on 4 October 2019
- 44 Integrated Child Protection Scheme, <http://cara.nic.in/PDF/revised%20ICPS%20scheme.pdf> Last accessed on 9 October 2019
- 45 MV Foundation in Telangana; Jabala in West Bengal and Mahila Jan Adhikar Samiti in Rajasthan
- 46 District Need Assessment studies Jalna, Leh, Madhubani, Morigaon, Mumbai, Rajouri, and Yavatmal conducted by Leher in partnership with various organizations including district administrations, National Development Foundation Jammu, Sarvo Prayas Sansthan, UNICEF and partners. <https://leher.org/whatwedo/> Last accessed on 30 August 2019
- 47 <https://www.bain.com/insights/india-philanthropy-report-2019/> Last accessed on 30 August 2019
- 48 https://www.unescap.org/sites/default/files/6-ESCAP-Social%20Sector_July2015_share_1.pdf Last accessed on 30 August 2019
- 49 HAQ: Centre for Child Rights 2019 New Delhi. HAQ: Centre for Child Rights. Children in the 'Trillion Dollar Economy'. Budget for Children
- 50 Allen Consulting Group, 2009. Australia's Research Alliance for Children and Youth (ARACY) Research Report, Inverting the Pyramid: Systems for Protecting Children
- 51 <https://www.livemint.com/Opinion/QE197bsC8SCzfr8C5kajV0/Are-kids-safe-online.html> Last accessed on 30 August 2019
- 52 https://unicef.in/Uploads/Publications/Resources/pub_doc115.pdf Last accessed on 30 August 2019
- 53 Telenor & BCG, 2012. Building Digital Resilience. https://unicef.in/Uploads/Publications/Resources/pub_doc115.pdf Last accessed on 30 August 2019
- 54 UNICEF, 2016, Child Online Protection Report. https://www.icmec.org/wp-content/uploads/2016/09/UNICEF-Child-Protection-Online-India-pub_doc115-1.pdf Last accessed on 4 October 2019
- 55 http://timesofindia.indiatimes.com/articleshow/64676694.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst Last accessed on 30 August 2019
- 56 Blue Whale challenge: In this game, an online administrator assigns tasks to its participants. The participants are given a period of 50 days to complete each task. The players are expected to take photos of them undertaking the challenge and upload them as proofs for the curator's approval. The last challenge is to commit suicide. Players of this game cannot stop playing because they are blackmailed and cyber bullied into completing the game. This deadly game has spread all over the globe, and in India there have been reports of children harming themselves and in a few cases even committing suicides, which are allegedly linked to Blue Whale Challenge. More than six children across India in the age group of 12-19 years have taken their lives allegedly playing this game within a span of two weeks <http://www.unicef.in/STAYSAFEONLINE/Story-What-is-the-Blue-Whale-Challenge-and-why-should-parents-be-concerned-about-this-game-.html> Last accessed on 30 August 2019
- 57 <https://www.nischint.com/harmful-effects-smartphones-children> Last accessed on 30 August 2019
- 58 <https://timesofindia.indiatimes.com/city/bengaluru/gaming-addiction-6-children-look-for-help-at-nimhans-clinic-every-week/articleshow/64676694.cms> Last accessed on 30 August 2019
- 59 UNICEF, 2016, Child Online Protection Report. https://www.icmec.org/wp-content/uploads/2016/09/UNICEF-Child-Protection-Online-India-pub_doc115-1.pdf Last accessed on 4 October 2019
- 60 UNICEF, 2016. Child Online Protection Report
- 61 POCSO, <https://wcd.nic.in/sites/default/files/Protection%20of%20Children%20From%20Sexual%20Offences%20%28Amendment%29%20Act%2C%202019.pdf> Last accessed on 9 October 2019
- 62 <https://www.prsindia.org/billtrack/protection-children-sexual-offences-amendment-bill-2019-0> Last accessed on 30 August 2019
- 63 Squeglia LM, Jacobus J, Tapert SF. The influence of substance use on adolescent brain development. Clin EEG Neurosci 2009;40:31-8.

- 64 <http://www.nmji.in/article.asp?issn=0970-258X;year=2017;volume=30;issue=4;spage=224;epage=229;aulast=Dhawan#ref2> Last Accessed on 30 August 2019
- 65 Tikoo VK, Dhawan A, Pattanayak RD, Chopra A. Assessment of pattern, profile and profile of substance use among children in India. 2013. National Commission for Protection of Child Rights (NCPCR) and All India Institute of Medical Sciences (AIIMS). New Delhi https://www.ncpcr.gov.in/view_file.php?fid=17 Last Accessed on 30 August 2019
- 66 Tikoo VK, Dhawan A, Pattanayak RD, Chopra A. Assessment of pattern, profile and profile of substance use among children in India. 2013. National Commission for Protection of Child Rights (NCPCR) and All India Institute of Medical Sciences (AIIMS). New Delhi http://www.ncpcr.gov.in/view_file.php?fid=17 Last accessed on 30 August 2019
- 67 http://dcpcr.delhi.gov.in/wps/wcm/connect/doit_dcpcr/DCPCR/Publication/Substance+Abuse+by+Children+in+Delhi Last accessed on 30 August 2019
- 68 <https://deaddictioncentres.in/news/indias-youth-drugs/> Last accessed on 30 August 2019
- 69 Writ Petition (Civil) NO. 906 OF 2014. <https://bba.org.in/assets/pdf/rop.pdf> Last accessed on 30 August 2019
- 70 <https://www.financialexpress.com/opinion/what-is-ailing-indias-education-system/1270524/> Last accessed on 30 August 2019
- 71 <http://www.firstpost.com/india/indias-unemployment-crisis-1-3-million-youth-need-jobs-every-month-eight-million-a-year-says-world-bank-report-4453457.html> Last accessed on 30 August 2019
- 72 The Skills They Want: Aspirations of students in Emerging India, University of Pennsylvania. <https://casi.sas.upenn.edu/sites/default/files/bio/uploads/Thepercent20Skillpercent20Theypercent20Wantpercent20Cpercent20Aspirationspercent20ofpercent20Studentspercent20inpercent20Emergingpercent20Indiapercent20-perpercent20Aggarwalpercent20Cpercent20Kapurpercent20Tognatta.pdf> Last Accessed on 30 August 2019
- 73 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4711229/> Last accessed on 30 August 2019
- 74 <https://feminisminindia.com/2017/08/29/sexuality-education-indian-culture/>
- 75 Census 2011 – Total population = 1210854977, Urban total population = 377106125, Urban child population = 128476879
- 76 <https://www.downtoearth.org.in/news/health/urban-children-in-slums-more-vulnerable-to-health-risks-says-report-50539> Last accessed on 30 August 2019
- 77 <https://www.savethechildren.in/sci-in/files/79/79bfb888-7ed0-496e-b1e7-e71f7814ea7e.pdf> Last accessed on 30 August 2019
- 78 National Crimes Records Bureau (MHA), 2019, Crimes in India (Table 4B.1) 2017, New Delhi. <http://ncrb.gov.in/StatPublications/CII/CII2017/pdfs/CII2017-Full.pdf>, Last accessed on 24th October, 2019
- 79 National Crimes Records Bureau (MHA), 2019, Crimes in India 2017, New Delhi (Table 4A.3) <http://ncrb.gov.in/StatPublications/CII/CII2017/pdfs/CII2017-Full.pdf>, Last accessed on 24th October, 2019. Kidnapping and Abduction of Children (Sec. 363, 363A, 364, 364A, 365, 366, 366A, 367, 368 & 369 IPC) (Total) =11128 Total IPC + SLL in Metropolitan cities = 19544 (Table 4B.2(i))
- 80 Child Protection District Need Assessment Study (DNA), Mumbai Suburban, Maharashtra. A collaboration between UNICEF, AIILSG & Leher 2018, <https://leher.org/whatwedo/> Last accessed on 30 August 2019
- 81 Save the Children and PWC, 2015, Forgotten voices: The world of urban children in India. <https://www.savethechildren.in/sci-in/files/79/79bfb888-7ed0-496e-b1e7-e71f7814ea7e.pdf>, Last accessed on 4th October, 2019

5

EDUCATION AS A RIGHT

SUBIR SHUKLA

Photo Credit: Devanath



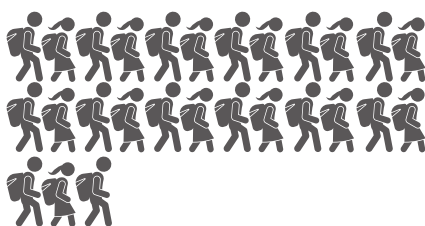
Introduction

The two decades of this century witnessed India's remarkable achievement in making elementary education nearly universally accessible to children, a contemporary curriculum framework, the passage of the Right to Education (RTE) as a fundamental right, the development of one of the largest data bases on schools, and a restructuring of the country's Education for All (EFA) programmes to create a holistic, overarching programme from pre-school to higher secondary.

However, these successes also created new areas of concern: vast numbers of children at well below their age-appropriate learning levels, systems struggling with institutional and personnel issues, an inability to make a pedagogical transition, and persisting discrimination that prevents children from gaining in proportion to the time they spend in school. It can be said that the battle for EFA has irreversibly shifted from what it was at the turn of the century – from provisioning to ensuring equity – but the experience of the last thirty years has also yielded possibilities of what we can do. This chapter makes an effort to capture the evolving story of education in India from pre-school to the secondary level.

THE CHALLENGE OF EDUCATION FOR CHILDREN TODAY

- Vast numbers of children at well below their age-appropriate learning levels
- Systems struggling with institutional and personnel issues
- An inability to make a pedagogical transition
- Persisting discrimination that prevents children from gaining in proportion to the time they spend in school



27 million
enrolled in Class 1 in 2015-16



12 million
reached Class 12

Pre-School Education

While a country-wide pre-school system does not yet exist (it is in the making, though, as explained ahead), large sections of the population are reached by the Integrated Child Development Services (ICDS), which focuses on health, nutrition and education of children (birth-six years) from the underprivileged sections. The scheme is now available to 67.23 per cent of the targeted population.¹

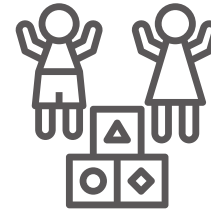
In 2014, around 34 million children in the 3-6 years age group accessed the Anganwadis run under the programme.²

With the Government of India signing an agreement with the World Bank in May 2018 to finance its expansion, the scheme is now slated to be upscaled to all the districts. ICDS has tended to function better in nutrition and health, with the education component tending to be weak, given the poorly trained, overburdened and underpaid Anganwadi workers.

The entry-level age for pre-school education, in Nursery, remains three years in most states. However, middle class parents eager to give their children a start and also avail of day care facilities, tend to enrol their children into play schools, often from the time they are around one and a half years of age. One of the intentions is to enable the child to later gain entry into a 'good' school, thus initiating the child into competitive 'academic stress' from early on. This is then capitalised by the burgeoning private pre-school sector that usually introduces young, pre-school children to the alphabet and numbers even though there is overwhelming evidence as well as policy advice against this.

For those without the means that the well-off can tap there are other, lower cost, lower 'quality' options, mainly in the urban areas. With 97 per cent working women being in the informal sector³, especially domestic workers with long hours and lack of extended family support (due to migration as a nuclear family to the city), there is an acute need for day care centres. This need is now served by 'tuition' centres for young children that teach children literacy and numeracy (and some claim, English). Most slums now have a large number of pre-schools/tuition facilities in one or few rooms of private home, usually providing limited space and inputs to children. They may also be used by older children when their mothers are away, to complete their school work or be with other children. Apart from the large number of unregulated centres, there are also some run by NGOs.⁴

Rural areas too have witnessed an expansion of private schools, with most having initiated Nursery and KG sections as a means of 'capturing' students from early on, contributing to a reduction in enrolment in government schools.⁵ As part of the overall expansion of school education in India, the number of pre-schools too has grown greatly since the turn of the century, though not so strongly in the government sector. Around 20.17 per cent of the government schools had 'attached' pre-primary sections⁶ but with lower enrolments and number of teachers when compared to private schools. Interestingly, of the children from low-income families who access pre-school, over 80 per cent rely upon low fee private schools.⁷ Some states, e.g. Haryana, have responded by asking government school teachers to open 'Nursery' sections to enrol children from the beginning. Schools that have done so are finding that their enrolment is stable or increasing as parents tend to continue their children's education in schools where they began. In the case of Himachal Pradesh, over 300 School Management Committee (SMC) had set up pre-primary classes in the school, and the state decided to support this by launching pre-primary classes across all primary schools.



Given the lack of school readiness among children due to lack of access to adequate pre-school education, many states have tried to address the issue by incorporation several weeks of 'readiness' work in the first few weeks in the curriculum and textbooks. However, in the absence of training and an overt focus on this aspect, teachers tend to neglect or remain unclear on what needs to be done during this phase.

Given the lack of school readiness among children due to lack of access to adequate pre-school education, many states have tried to address the issue by incorporation of several weeks of 'readiness' work in the first few weeks in the curriculum and textbooks. However, in the absence of training and an overt focus on this aspect, teachers tend to neglect or remain unclear on what needs to be done during this phase.

The examples of initiative described above may be seen as informal efforts of state governments to provide a semblance of preschool education. However, with the recent formulation of the Samagra Shiksha by merging various programmes being run by the Ministry of Human Resources Development (MHRD), as well as the emphasis of the draft National Education policy on Foundational Learning, pre-school education is now formally a part of the Government of India's EFA drive. Towards this, curriculum guidelines and policy have been formulated by the National Council for Education Research and Training (NCERT). Several states have begun the process of 'co-locating' Anganwadi with schools, though the process is mired in confusion at the moment. On the one hand it is not clear if Ministry of Women and Child Development (MWCD) will cede its control over the pre-school sector. On the other hand, states also need a specially allocated teacher who is trained for the purpose, along with space and infrastructure, both of which require substantial funding. Some states, e.g. Tamil Nadu, has deployed 'surplus' teachers (resulting from reduced enrolment in government schools) by training them to run pre-school sections school, beginning with 2382 pre-schools that are already located within government schools.

An analysis of the Project Approval Board (PAB) meeting minutes for the year 2019-20 shows that money has been allocated for training of Anganwadi instructors to strengthen the education component. Some states have also been sanctioned money to initiate pre-school classes 'co-located' in primary schools. However, it is not clear how the policy confusion of the jurisdiction between Department of Women and Child Development(DWCD)/Ministry of Women and Child Development (MWCD) and Department of Education (DoE)/Ministry of Human Resource Development (MHRD) will be sorted out. The administrative process required if a large number of teachers were to be recruited also needs to be worked out. At present, the overall thrust seems to be on a one-year pre-primary (rather than the two years as is typically the case), with emphasis on health and nutrition along with education.

Though the incorporation of pre-school in primary school can potentially benefit children and their learning greatly, other factors stand in way of those gains being accrued. Overall, the thrust in school tends to be on the more scholastic and academic aspects, with children being pressured to ingest components of literacy and numeracy they may not be ready for. At this age, their development demands a great deal of physical activity, unstructured but supervised free play, a stimulating environment, a substantial amount of time devoted to oracy and expression in diverse ways, and plenty of scope to handle concrete objects – all of which provide the basis for later learning. However, whether in the private school or in the government one, children are made to sit for long durations and made to repeat songs or letters or numbers, initiated into writing work, and trained to fall into a regimen. Instead of child-centred processes that give primacy to children's voice, scope for them to learn through purposeful activities where they are mentally engaged, the tendency is to subject them to 'direct teaching', a dull experience involving instruction after instruction, with little to involve children's minds. It is possible that the forthcoming expansion of pre-school education might just lead to subjecting children to all of this, which is known to be harmful for their development!

Another potential fallout is that the discrimination that children experienced at the age of six, will now begin earlier. This applies to the fact that a large number of children do not speak the language of the school. While the home and school language divide is well known in the case of tribal children and those who speak variations of languages such as Hindi, large-scale migration and urbanisation in recent times has led to over a dozen languages now being present in a classroom in a slum area. Not only do teachers not know how to deal with this, they are prone to discriminate against and deride children with backgrounds in languages other than that of the school. (There has been very little effort to develop a pedagogy of language learning for multi-lingual pre-school contexts, the notable

exception being in Odisha, where Bernard van Lear Foundation (BvLF) supported the development of mother-tongue based Early Childhood Education (ECE) for four tribal languages.) Apart from language, schools are prone to discriminating children on basis of gender, caste, class, ethnicity, disability or being from a minority group – all of which may now be experienced by children at a younger age than ever before.

One way to address these potential issues is to look at successful small-scale programmes run in the NGO sector, of which there are several good examples in the country (e.g. Mobile Creches or Uttarakhand Seva Nidhi Environmental Education Centre, or Society of Integrated Development of Himalayas (SIDH), or the pre-school curriculum development process used in Odisha by IgnusERG involving communities from four tribes). Lessons could also be drawn from District Primary Education Programme (DPEP), Sarva Shiksha Abhiyan (SSA) and the processes involved in implementation of the RTE, with regard to the introduction of child-centred pedagogy, and the use of concrete materials and oracy in early primary schools – if nothing else, at least the mistakes made earlier could be avoided. Finally, the need to involve parents and community is critical to the success of pre-school programmes and the available structures (of SMCs and Panchayati Raj Institutions (PRI)) could be built upon to this end.

Elementary School

A Brief History of How We Reached Where We Are

India's journey towards Education for All (EFA) began with the 1986 National Policy on Education, with its focus on Universalisation of Elementary Education (UEE). The Plan of Action for the Policy (1992) emphasised enrolment with retention, the need for an attractive school environment, participative planning, reform in teacher education and flexible provisioning, especially for girls and working children, through Non-formal Education (NFE). Following the release of the policy, the Government of India initiated Operation Blackboard (1987-2003) to ensure provisioning of materials, infrastructure and teachers, with a focus on recruiting women. The ongoing Andhra Pradesh Primary Education Programme (1989-96) was also upscaled to cover all the districts of the state.

It was after the World Conference on Education in Jomtien in 1990, though, that large-scale EFA initiatives got a boost, with the launch of Lok Jumbish (1990-2003), Bihar Education Project (1991-1997) and the UP Basic Education Programme (1993-2000). These eventually became part of the DPEP (1994-2003) which ran across 18 states. In turn, DPEP was replaced by SSA, (2001-2018) which was the first programme to cover the entire country. As the need was felt to address gaps in secondary education, the Rashtriya Madhyamik Shiksha Abhiyan (RMSA) (2009-2018) was created as an extension of SSA.

In August 2009, the Parliament of India enacted the Right of Children to Free and Compulsory Education Act (RTE), making education a fundamental right of children between the ages of 6 and 14. The act specified minimum norms for elementary schools and included reservation of 25 per cent seats in private schools for children from economically weaker sections. The SSA was now recalibrated to become the designated vehicle for the implementation of the RTE, with the National Commission for the Protection of Children's Rights (established in 2007) allocated the role of a monitoring agency.

As education was now required to take place in defined formal settings of schools, this led to the winding up of most NFE and Alternative Education initiatives, including those run by NGOs, which then transited to mainly supporting government efforts. In 2013, India introduced a law mandating large companies to spend 2 per cent of their average net profit on activities related to Corporate Social Responsibility (CSR), with a substantial proportion of that expenditure being spent on education since then.

In 2018, Sarva Shiksha Abhiyan (SSA), Rashtriya Madhyamik Shiksha Abhiyan (RMSA) and the teacher education schemes were merged into Samagra Shiksha, in order to 'to treat school education holistically without segmentation from pre-nursery to Class 12'.

The pattern begun with the earliest large-scale programmes has continued with there being a focus on increasing enrolment, retention and quality (with a focus on equity, interpreted as reducing disparity in access to services initially and later, learning levels).

Participation in School Improved

Following the various initiatives mentioned, the number of primary schools increased from 528,872 in 1986 to 638,738 in 2001 and to 847,118 in 2015⁸ (While the focus had been on primary education from 1995 onwards, in 2000 upper primary grades began to be included in universalisation efforts too, with a range of incentives (including mid-day meals, free school uniforms and textbooks, etc.) being provided to enhance participation of various disadvantaged groups in education.

From 2001 to 2015, enrolment in upper primary schools increased from 42.8 million to 67.16 million, with the Gross Enrolment Ratio (GER) for primary level (6-10 years) reaching 100.1 per cent and for upper primary (11-13 years), 91.2 per cent.

Though the infrastructure expanded rapidly, the recruitment of teachers did not, with an estimated 1.2 million teacher vacancies reported by the National Council for Teacher Education (NCTE) in 2010. The overall allocation of the expenditure too did not go beyond 3.71 per cent of the Gross Domestic Product (GDP), against the advocated 6 per cent.⁹ These factors combined to limit the gains made by universalisation.

In 2011-12, dropout rates still remained very substantial, being much greater in the case of Scheduled Tribe (ST) children, as can be seen below.

TABLE 1: DROPOUT RATES AT DIFFERENT LEVELS OF SCHOOLING BY SOCIAL GROUPS

Classes	General	Scheduled castes	Scheduled tribes	OBC
I-V	4.30	8.09	8.54	5.95
I-VIII	4.30	8.01	8.88	5.65
I-X	15.68	26.97	20.04	20.04

Data Definition: Proportion of Pupils disaggregated by Social category from a cohort enrolled in a given stage at a given school year who are no longer enrolled in the following school year.

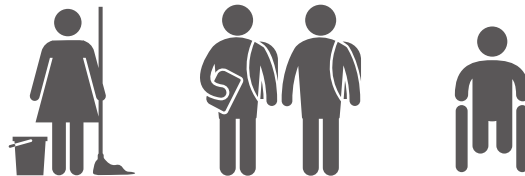
Source: "U-DISE Flash Statistics" (2016-17). National University of Educational Planning and Administration (NEUPA), Delhi.

Around 67 per cent of the out of school children population comprises children from Muslim, Scheduled Caste (SC) and Scheduled Tribe (ST) communities, though they are only 40 per cent of the child population.¹⁰

In all groups, a greater proportion of girls and children in rural areas are out of school, though in urban areas more boys than girls do not attend school.¹¹ However, children with disability are five times more likely to be out of school than SC or ST children.¹²



Children are now referred to as being 'out-of-school', 'dropouts', 'truant', 'never-enrolled' or 'school-going', as if that is the only aspect of their lives. Those who are the first in their family to attend school are unfortunately referred to as 'first generation learners' as if no previous generation ever learnt anything! In fact, they are merely first-generation school goers.



Those out of school disproportionately include girls, children living in rural areas, those from migrant and minority communities (including linguistic minorities), street and homeless children, those living in slums, working children and children with disabilities.

Quality and Learning Levels Remain a Concern

Though learning outcomes are only a proxy for the quality of an education system (aspects such as classroom processes and inclusiveness being other critical factors), they do offer us a window into what is not working well. For instance, the National Achievement Survey (NAS) 2014 showed low performance in reading, comprehension and basic mathematical operations, and the trend has not changed much, increasing marginally by 3 per cent in language but declining by 4 per cent in mathematics in the NAS 2017. These continue to persist in higher grades. A survey in 5 districts of Uttar Pradesh (UP) supported by the State Government, UNICEF and Ignus Pahal in showed around 70 per cent children to be below expected levels in grades 3 and 5. These gaps persist in higher classes, with more than 60 per cent of the students entering grade 9 being found at grades 4-5 level (in a survey in Bihar, UP, Odisha and Madhya Pradesh (MP)).

Poor Schools for Poor Children

The struggle for EFA, it can be said, has now shifted from outside the school to inside the classroom, with the dice continuing to be loaded against Dalit, Adivasi and Muslim children, whose learning levels remain well below those of upper caste children.¹³ Many factors account for this, in particular that children from poor families are likely to attend poorly resourced schools (in terms of infrastructure and teachers) whether government or low-fee private ones, thus compounding their disadvantage.¹⁴

Given that Pupil Teacher Ratio (PTR) norms provide for teachers at 1:30 students, and that a majority of schools are small schools (with 70-90 children), it is common to find 2 or 3 teachers handling 5 grades, implying that a majority of teachers are teaching in multi-grade contexts. Yet, curriculum, textbooks and teacher training continues to assume a mono-grade setting.

The Student Profile has Changed

A bigger factor responsible for persistent low levels of learning has been the inability of the system to respond to the changing profile of students. With the increase in enrolment made up mainly of those from marginalised backgrounds (those from low income families, tribal children, socially excluded groups, working children, migrant groups, girls, children with special needs (CWSN)) classroom diversity increased dramatically. Many of the earlier assumptions did not hold. For instance, for many children it is not possible to attend school daily, or function in the language of the school or get support from family on school work. In urban slums, migration created classrooms where a dozen languages might commonly be found. Overall the learner is expected to adjust to the requirements of school while the school itself does not adapt to learners' contexts and needs.

Unfortunately, instead of responding to the situation by changing the educational design (e.g. through reformulated curricula, classroom processes, materials and assessment), the education system persisted with the expectation that children would adjust to school, resulting in a situation that rendered children unable to participate in the teaching learning process, triggering what is being characterised as a 'learning crisis'.¹⁵

With the increase in enrolment of children from low income families, tribal children, socially excluded groups, working children, migrant groups, girls, CWSN, classroom diversity increased dramatically. Instead of responding to their needs by changing the educational design, the system has persisted with the expectation that children would adjust to school, triggering a 'learning crisis'.

Teaching-Learning Processes Proved Difficult to Change

At the heart of this is also the issue of pedagogy. From the 1986 policy onwards and in particular from National Curriculum Framework 2005 (NCF-05) onwards an activity-based, 'constructivist' and holistic approach is advocated, and even enshrined in the RTE, which asserts that children will learn

through ‘activity, exploration and projects’. The intention is that children should play an active role in their own learning, through engaging them in tasks that lead them to reflect and apply their learning. However, what we continue to see in school is a didactic approach, ‘imparting’ education rather than enabling children to develop their understanding. The child’s agency finds no place as teacher control dominates learning.

Similarly, though holistic and higher order learning is advocated, the focus tends to remain on the basics and aspects that can be easily examined, as may be seen in the focus on science facts rather than scientific thinking. This is a model that emerged during ‘information-scarce’ times and does not hold in a context where a mobile phone can be used to access such facts. Though ‘21st century skills’ are often referred to, there is little to suggest that those most likely to be affected by 21st century issues – of climate change, loss of jobs to technology, a cultural homogenising and the resulting marginalisation – are being equipped to deal with them through education.

In order to facilitate holistic education (including the emotional, social, physical and emotional development of the child), the RTE mandated ‘continuous, comprehensive evaluation (CCE)’ as a pedagogical tool – the intention being to assess different domains on an ongoing basis, and respond to the findings by altering the teaching learning process to fit the levels and needs of children. This is in keeping with the rights perspective, where the child is the rights-holder and school is the duty-bearer. If children do not learn, the onus is on the school rather than the child – for this reason, the detention policy had been done away with. However, over the years, CCE has tended to boil down to two kinds of tests (summative and formative), diluting the original intent. Moreover, the introduction of non-detention was seen as removing the ‘fear’ assumed to be behind learning and leading to low levels of learning. In the last year, the RTE has been modified to allow states to detain children at certain levels, which will in all likelihood disproportionately affect children from marginalised backgrounds.

Learning Materials – Available, Underused or Limited

Learning is supported through the supply of textbooks to students in government schools for free. While delays and quality issues affect this component, it can be said that most children have had access to this vital resource, especially since government began to provide free of cost in the early part of this century. Alongside, enormous amounts of material to support learning has been supplied to schools under Teaching Learning Material (TLM) grants, beginning from Operation Blackboard and repeated since in every programme that has followed, with SSA having included a TLM grant for teachers every year. It is common knowledge, however, that various observers and teachers themselves report that this material often lies unused. In a recent visit by this author to tribal villages not too far from a metropolis, some of the schools had TLM ‘kits’ contained in metal trunks from Operation Blackboard, DPEP and SSA, all lying unopened.

Starting in the mid-to late 1990s, satellite TV, computer aided learning and later tech-assisted learning has been proliferating in government schools as well. There is little evidence, though, that the substantial investment in this regard has generated commensurate returns. In the early phases of ICT incorporation, a greater focus was on putting the textbook on the screen or providing video explanations – if these components did not work in the original it was unlikely they would work on the screen manifestations! With a large number of vendors sensing opportunity, government systems are now awash with various tech companies offering various devices, apps and programmes, with a focus on ‘improving marks’. As yet there has been no ‘disruption’ – mainly because tech inputs tend to adopt the limitations of the education system (e.g. marks orientation, teacher/content domination) rather than challenge it to bring about improvement (e.g. by enhancing learner agency to support autonomous learning). Many states (such as Gujarat, UP and MP) have also introduced mobile phones as a means of ensuring accountability, with teachers being required to mark their attendance by upload a selfie or marking attendance on a geo-fenced app.¹⁶ Critics (and many teachers’ unions) have labelled this as surveillance that intrudes teachers’ and childrens’ privacy.

Key Issues that Persist

The continued poor quality of the government school system stems from many reasons. Apart from the inability to respond to change in students' demographic profile mentioned earlier, some of the other factors that play a significant role include the following:

- **Vacancies at various levels:** Not only are there teacher vacancies, there are substantial gaps in the administrative cadre, as well as in institutions such as the District Institute of Education and Training (DIET) and State Council of Educational Research and Training (SCERT), ranging from 25 per cent to 70 per cent in certain cases. This affects teacher professional development, supportive supervision and monitoring, fund flow and governance aspects, to the detriment of schools and children.
- **Lack of continuity due to changes in leadership:** Though a large number of small- and large-scale programmes have been initiated in the country and even demonstrated success, when leadership changes (as in the transfer of key officials such as education secretary or director, or the change of government due to elections) such efforts are discontinued and new ones begun, leading to a waste of resources and momentum. Teachers, too, learn to 'wait out change' as they feel that what is advocated today may not continue for long.
- **Inability to strengthen the 'cutting edge' or 'last mile':** The inability of states to define the role and strengthen the capabilities of Cluster Resource Centres (CRCs) and Block Resource Centres (BRCs) – both of which play the role of quality assurance at grassroots level – has led to a relatively unmonitored system where teachers do not face oversight or receive the academic support needed.
- **Lack of internal consistency across different components:** Very often there may be a lack of consistency among, say, the curriculum (holistic) and textbooks (discrete), or training (activity-based) and assessment (favouring rote learning). This negates the gains made in one aspect as other aspects do not support it to the extent required.
- **Insufficient focus on shedding the command and control mindset:** Though the overall objective in policies is to develop 'autonomous learner' who can think for themselves, the education system functions in a command and control manner, where instructions are to be followed and hierarchy to be observed. An overall feeling is still that if there is no fear, people will not work. This is one of the reasons why 'non-detention' has been opposed.
- **Inability to re-consider the design to address disadvantage:** In what may be an instance of systemic blindness, curriculum and material developers are unable to perceive that large sections of children are unable to attend school regularly, that a majority of teachers teach in multi-grade rather than mono-grade contexts, or that there are multiple languages within a classroom. Each of these situations, if recognised and responded to, can actually be a resource where what are considered present 'disadvantages' could actually be the contrary. In the absence of this, continuing with present expectations is likely to increase the gap between the learning 'haves' and 'have-nots'.

Making a Difference

Experience over the last three decades does indicate that it is not impossible to overcome the limitations pointed out. Some of the key learnings that could help define the way forward, include the following:

- **A holistic, long-term approach that is persisted with, makes a great difference.** This is what enabled the transition in Kerala from ranking in the 30s in the first national survey of learning achievement in 1995, to consistently figuring in the top 3 from the next survey onwards.
- **Creating practical manifestations of the advocated pedagogy is central to the desired change.** It is important to make activity based, differential learning easy for teachers to understand and implement. An instance of this is the use of the learning cycle in the form of ERAC (experience – reflection – application – consolidation) which has successfully been implemented in a large

number of schools in several states.

- **Rather than instructions being passed ‘down’ it is far more helpful to share a vision with the various stakeholders.** This could turn the present hierarchical (and somewhat adversarial) relationships between administrators, teachers and communities into a set of constructive partnerships.
- **Empowering various participants (teachers, trainers, supervisors, for instance):** Teachers, trainers, supervisors, for instance, if empowered with with better thinking skills will generate the ability to perceive the limitations that seems ‘natural’ and ‘normal’ while also learning to implement alternative ways of functioning.
- **Defining outcomes at multiple levels on learning outcomes for children:** Programmes and systems are clear on the learning outcomes at the level of children: They do not spell out the capabilities or ‘outcomes’ needed at the level of teachers, teacher educators and supervisors to be able to deliver learning outcomes among children. This leads to an inability to ensure focused professional development, monitor progress and ensure that learning outcomes (which are every child’s right) are delivered. A few recent efforts to define and measure performance indicators of teachers and supervisors in an ongoing and real-time manner have led to encouraging results.
- **Finally, progressive/incremental change over a long term are more likely to yield lasting change:** However, this requires deepening our understanding of how teachers, schools and systems learn. Towards this too, work done in the last 10 years provides many inputs that can now be stitched together to transform education to strongly serve the interests, needs and rights of children.

Secondary Education

Enrolment and Retention

India responded to its demographic bulge comprising of adolescents by beginning to focus on enrolment in the secondary stage (grades 9 and 10) from the year 2009 onwards, when the RMSA commenced. However, enrolment drives covering the secondary stage had begun much earlier and from 2001 to 2015, enrolment in secondary schools rose from 27.6 million to 61.8 million. This brought the GER for secondary level (14-15 years) to the current 78.5 per cent and senior secondary (16-17 years) 53.5 per cent While this is significantly lower than the GER for the elementary level, it is also compromised by high drop rates and poor transition rates at 69.04 per cent (from secondary to higher secondary). Significant reasons for dropout include the poor quality of elementary education that ill prepares students for the sudden increase in academic difficulty in grade 9, and schools weeding out children to improve Board results. A 2014 survey found an attendance rate of only 71 per cent; those from disadvantaged groups often being held back to support families.¹⁷

Several other barriers confront children at this stage. As education at this level is not free and entails expenditure (especially as there are more private and aided secondary schools than government ones), this affects the ability of the poor to participate. The home to school distance, especially in rural areas, and for girls in particular, acts as a deterrent. The 68th National Sample Survey Office (NSSO) Report indicates that 31.1 per cent of 15-19-year-old boys are engaged in work or seeking employment. With nearly half of tribal children in the age group 15-17 being in child labour,¹⁸ their participation remains low. The urban poor (17 per cent of urban households live in slums, Census 2011, and an estimated 11 million children live in street situations)¹⁹ remain deprived of educational opportunities. Similarly,



Several barriers confront children in Secondary Education. The presence of more private and aided secondary schools than government ones at this level affects access because education at this level is no longer free.

though inclusion of Children with Special Needs (CWSN) has been provided for in both SSA and RMSA, a large proportion of adolescents with disabilities do not attend school, with estimates ranging from a quarter in the 'best' state (Karnataka) to over half (in Madhya Pradesh and Assam).²⁰

Girls face the greatest barriers among all disadvantaged groups, including hostile public spaces, disparities in nutrition, burdened by household work and care related responsibilities, withdrawal around puberty or early marriage (According to Census 2011, 20 per cent girls in the age group 15-19 are married). Boys are more likely to attend private schools and Muslim girls may receive only religious education. Within the school, the infrastructure may not be sensitive to girls' needs in terms of provision of toilets and security. During field visits, girls have informed of being offered Home Science instead of Mathematics, which they wanted to study. In school, too, girls may be expected to take sex stereotyped activities such as maintaining cleanliness. In 2010, an estimated 83 per cent girls made the transition from primary to upper primary, 61 per cent to secondary and only 37 per cent to higher secondary (Department of Secondary and Higher Education, Government of India, 2010). The gender parity index remains at 0.96,²¹ partly also because a large section of boys of this age are involved in labour.

Quality and Learning Levels

The NCF-05 recommended education that would promote "independence of thought and action, sensitivity to others' well-being and feelings, learning to respond to new situations in a flexible and creative manner, predisposition towards participation in democratic processes, and the ability to work towards and contribute to economic processes and social change."²² However, as is evident this remained only an idea and a weak programme at best, with secondary curricula continuing to emphasise scholastic content in the subjects with a focus on preparation for the school leaving examination.

The inability of the school system to teach in a manner that is appropriate to the age group and the developmental stage at which adolescents are, and the persistent discriminations faced by various categories of students, contribute to the poor levels of learning that most students seem to attain.

A common feature of secondary education across states remains the high number of vacant teacher posts, in particular in Science and Mathematics. With a much higher pupil-teacher ratio, there is a reliance on a one-way lecture method, using more complex language drawn from the discipline. Though adolescents bring considerable knowledge, skills (even expertise) and experience from the world outside school, this is hardly ever made use of. Moreover, they are capable of using logic, creativity, imagination, critical thinking, higher order thinking, and reflection – yet they are compelled to endure hour after hour of passive listening to content that may not relate with them.

While this is something that adolescents across all groups go through, certain groups experience specific forms of discrimination. Dalit students, for instance, may be made to sit in segregated rows or be allowed to drink water only after upper caste boys, or might be excluded from extra-curricular activities.²³ Teachers may stereotype first-generation school-goers as being incapable of learning and not worth 'wasting time' on. Children who are absent or CWSN may simply be ignored by teachers. Adivasi and dalit children whose home language is different from the textbook language, and who may not have support at home, face not only hampered learning but also adverse effects to their motivation and sense of self and identity, often being labelled 'backward'.

It is not surprising then that by the time they enter secondary classes, children have acquired cumulative learning gaps (as mentioned earlier, an Ignus Pahal²⁴ survey revealed children entering class 9 to be at class 4-5 level). By this time, children also need language for academic proficiency

"Independence of thought and action, sensitivity to others' well-being and feelings, learning to respond to new situations in a flexible and creative manner, predisposition towards participation in democratic processes, and the ability to work towards and contribute to economic processes and social change."

NCF-05

– another gap that prevents them from accessing learning or participating in classroom processes. In contrast to what may be expected, the Annual Status of Education Report (ASER) report of 2017, ‘Beyond Basics’ looks at 14-18 year olds in rural areas (the first cohort to have been through school after introduction of the RTE 2009) found 25 per cent not being able to read fluently in their own languages and more than half struggling with simple maths problems.

Clearly, secondary education is far from fulfilling the promise of helping India make the leap to a developed nation.

What the School System Continues to Struggle With

As will be evident, certain strands running across the various stages of education continue to hold back progress. Some of the more prominent ones are described in this sub-section.

Sources of Inequity

Despite all the possibilities offered by EFA programmes, the RTE as well as the NCF-05, as well as the proliferation of technology, the didactic process adopted remain of the one-size-fits-all avatar. This increases the ‘waiting time’ experienced by a majority of children (i.e. the time that children are in the class but not engaged in learning, as it is at a level or pace not appropriate for them). Because teachers ‘teach to the average’ and do not return to topics already ‘covered’ many sections of the classroom keep falling behind, leading to low learning levels.

This is also exacerbated by issues related to cultural contexts and iniquitous situations that many children face, such as:

- **The home vs school language divide:** with most children speaking a language at home that is different from that of the textbook, and schools typically not spending enough time to develop oral proficiency in the school language, children suffer from this gap through much of the academic career. Both the RTE and the NCF-05 advocate the use of home language in the early grades; however, this does not happen, though there are a few multi-lingual education (MLE) efforts in Odisha and Jharkhand.
- **Context of content:** Much of the curriculum, materials and classroom process relate to contexts that are more middle-class and urban in nature. A consequence of this is that the cultural capital and knowledge heritage that vast swathes of children bring with them to the classroom is rendered unusable and children are treated as being of ‘low standard’. Thus, a tribal child’s fund of knowledge, say, of plants and animals, or that of a rag-picker’s about materials – finds no place in the classroom, leading to alienation and the feeling of being ‘below’ others. The homogenising thrust of school, that privileges the languages, knowledge and culture of dominant groups, delegitimises those of numerous others.
- **Discrimination:** This is taken further in the discrimination that various children’s groups face, especially girls, SC, ST, working children, minorities and those with special needs. They are often victims of what is referred to as the ‘hidden curriculum’, where in messages are conveyed to them about their position in the social hierarchy, unconsciously by various processes and practices, such as who is allowed to answer questions in the classroom, or assigned duties (such as cleaning up). There is also overt discrimination, whether in the mid-day-meal or at the handpump for drinking water, or the various names used for children from certain groups. The fact that newspapers consider it fit to report when a child from a poor family does well in an examination underscores the widely held assumption in society that such children are not really ‘supposed’ to do well (or it would not be newsworthy!).

HOW CASTE IS MARRING MID-DAY MEALS

Discrimination against the Dalits is still pervasive in our society, and this is seriously marring the potential of the Mid Day meal scheme

By Akhileshwari Reddy

"In 2013, Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes released a report, condemning the practice of untouchability under the scheme. Following this, the Union government created task forces to investigate the matter. Their findings were appalling. Under the scheme, the Ministry of Human Resource Development has identified 144 poorly performing districts with regards to the practice of untouchability and caste-based discrimination. The task forces visited 76 schools in Odisha and nine in Bihar, Madhya Pradesh, Uttar Pradesh and Rajasthan. However, they reported that they did not find instances of untouchability in any school, except at those in Odisha's Boudh district. The committee report says this could not be an accurate assessment of the situation. The schools had likely been tipped off about the impending inspections, thereby skewing the findings of the task forces. To tackle the problem, the committee recommends that those practising untouchability must be given exemplary punishment and that monitoring teams should make regular, unscheduled visits to Dalit dominated schools. However, there is no indication that the government has acted on these urgently needed recommendations."

Source: <https://www.downtoearth.org.in/news/governance/how-caste-is-marring-mid-day-meals-60898>

TABLE 2: LEVEL-WISE ENROLMENT IN SCHOOL & HIGHER EDUCATION: 2015-16

(in thousand)

Level	All Categories			SC			ST		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
Primary (I-V)	66873	62250	129123	13274	12469	25743	7102	6636	13739
Upper Primary (VI-VIII)	34720	32874	67594	6750	6427	13177	3416	3215	6631
Elementary (I-VIII)	101593	95124	196717	20024	18896	38920	10518	9851	20370
Secondary (IX-X)	20547	18598	39145	3824	3487	7311	1710	1614	3323
I-X	122140	113722	235862	23848	22383	46231	12228	11465	23683
Senior Secondary (XI-XII)	13002	11733	24735	2240	2047	4287	876	799	1675
I-XII	135142	125455	260597	26088	24430	50518	13104	12264	25368

Source: Educational Statistics at a glance 2018.MHRD.GOI

TABLE 3: AVERAGE ANNUAL DROP-OUT RATE IN SCHOOL EDUCATION

A: ALL CATEGORIES OF STUDENTS

Classes/Year	Primary			Upper Primary			Secondary		
	Boys	Girls	Total	Boys	Girls	Total	Boys	Girls	Total
2011-12	5.89	5.34	5.62	2.13	3.20	2.65	NA	NA	NA
2012-13	4.68	4.66	4.67	2.3	4.01	3.13	14.5	14.5	14.54
2013-14	4.53	4.14	4.34	3.09	4.49	3.77	17.93	17.79	17.86
2014-15	4.36	3.88	4.13	3.49	4.6	4.03	17.2	16.9	17.06

B: SCHEDULED CASTE STUDENTS

Classes/Year	Primary			Upper Primary			Secondary		
	Boys	Girls	Total	Boys	Girls	Total	Boys	Girls	Total
2013-14	4.42	3.85	4.14	3.75	5.04	4.38	18.96	18.32	18.66
2014-15	4.71	4.2	4.46	5	6.03	5.51	19.6	19.1	19.36

C: SCHEDULED TRIBE STUDENTS

Classes/ Year	Primary			Upper Primary			Secondary		
	Boys	Girls	Total	Boys	Girls	Total	Boys	Girls	Total
2013-14	7.97	7.98	7.98	8.03	8.85	8.43	27.42	26.96	27.20
2014-15	7.02	6.84	6.93	8.48	8.71	8.59	24.9	24.4	24.68

Source: National University of Educational Planning and Administration (NEUPA), New Delhi
Figures are provisional.

Low Returns on Investment

At this point, it is difficult to come across any issue or gap for which interventions have not been made through innovative pilot or large-scale programmes, whether alternative education modes for marginalised children, recurrent in-service training of teachers, introduction of different models of 'child-friendly' schools, various capacity building programmes for personnel and institutions, large-scale assessments, development of a variety of packages (including for multi-grade and multi-lingual contexts), community involvement through School Management Committees that include parents, etc. Many of these are run today with civil society involvement, including CSR support, a majority of whom conduct 'baseline' and 'endline' tests to reveal poor performance of children and teachers. An unwanted consequence is the demonisation of government school teachers visible in media as well as literature related to schools.

An accompanying refrain, though, is that all these efforts ultimately fail to lead to the kind of sustained and ongoing improvement expected. Parents, including those with meagre resources, have voted against the government school by sending their children to private school. Most states now have 'excess' teachers (ranging from hundreds to thousands) due to declining enrolment in government schools, while low-fee or 'budget' private schools have seen a phenomenal growth in the last two decades. Along with this, the proliferation of the coaching industry in the country is visible in every town and village. And a small home-schooling movement too has begun in India in response to what formal school education has become.

Key Issues that Persist

The continued poor quality of the government school system stems from many reasons. Apart from the inability to respond to change in students' demographic profile mentioned earlier, some of the other factors that play a significant role include the following:

- **Vacancies at various levels:** not only are there teacher vacancies, there are substantial gaps in the administrative cadre, as well as in institutions such as the DIETs and SCERTs, ranging from 25 per cent to 70 per cent in certain cases. This affects teacher professional development, supportive supervision and monitoring, fund flow and governance aspects, to the detriment of schools and children.
- **Lack of continuity due to changes in leadership:** Though a large number of small- and large-scale programmes have been initiated in the country and even demonstrated success, when leadership changes (as in the transfer of an education secretary or director, or the change of government due to elections) such efforts are discontinued and new ones begun, leading to a waste of resources and momentum. Teachers, too, learn to 'wait out change' as they feel that what is advocated today may not continue for long.
- **Inability to strengthen the 'cutting edge' or 'last mile':** The inability of states to define the role and strengthen the capabilities of Cluster Resource Centres (CRCs) and Block Resource Centres (BRCs) – both of which play the role of quality assurance at grassroots level – has led to a relatively unmonitored system where teachers do not face oversight or receive the academic support needed.

- **Lack of internal consistency across different components:** Very often there may be a lack of consistency among, say, the curriculum (holistic) and textbooks (discrete), or training (activity-based) and assessment (favouring rote learning). This negates the gains made in one aspect as other aspects do not support it to the extent required.
- **Insufficient focus on shedding the command and control mindset:** Though the overall objective in policies is to develop 'autonomous learner' who can think for themselves, the education system functions in a command and control manner, where instructions are to be followed and hierarchy to be observed. An overall feeling is still that if there is no fear, people will not work. This is one of the reasons why 'non-detention' has been opposed.
- **Inability re-consider the design to address disadvantage:** In what may be an instance of systemic blindness, curriculum and material developers are unable to perceive that large sections of children are unable to attend school regularly, that a majority of teachers teach in multi-grade rather than mono-grade contexts, or that there are multiple languages within a classroom. Each of these situations, if recognised and responded to, can actually be a resource where what are considered present 'disadvantages' could actually be the contrary. In the absence of this, continuing with present expectations is likely to increase the gap between the learning 'haves' and 'have-nots'.

Making a Difference

Experience over the last three decades does indicate that it is not impossible to overcome the limitations pointed out. Some of the key learnings that could help define the way forward, include the following:

- **A holistic, long-term approach:** This is what enabled the transition in Kerala from ranking in the 30s in the first national survey of learning achievement in 1995, to consistently figuring in the top 3 from a years later onwards.
- **Creating practical manifestations of the advocated pedagogy:** It is important to make activity based, differential learning easy for teachers to understand and implement. An instance of this is the use of the learning cycle in the form of ERAC (experience – reflection – application – consolidation) which has successfully been implemented in a large number of schools in several states.
- **Shared vision:** Rather than instructions being passed 'down' it is far more helpful to share a vision with the various stakeholders. This could turn the present hierarchical (and somewhat adversarial) relationships between administrators, teachers and communities a set of constructive partnerships.
- **Empowering various participants:** Teachers, trainers, supervisors, for instance, if empowered with with better thinking skills will generate the ability to perceive the limitations what seems 'natural' and 'normal' while also learning to implement alternative ways of functioning
- **Defining outcomes at multiple levels:** Though programmes and systems are clear on the learning outcomes at the level of children, they do not spell out the capabilities or 'outcomes' needed at the level of teachers, teacher educators and supervisors to be able to deliver learning outcomes among children. This leads to an inability to ensure focused professional development, monitor progress and ensure that learning outcomes (which are children's right) are delivered. A few recent efforts to define and measure performance indicators of teachers and supervisors in an ongoing and real-time manner have led to encouraging results.
- **Progressive/incremental change over a long term:** This is more likely to yield lasting change. However, this requires deepening our understanding of how teachers, schools and systems learn. Towards this too, work done in the last 10 years provides many inputs that can now be stitched together to transform education to strongly serve the interests, needs and rights of children.

Endnotes

- 1 Government of India. 2013, May. Children covered under ICDS scheme–state–wise details. New Delhi: Press Information Bureau, Ministry of Women and Child Development Government of India. <http://pib.nic.in/newsite/PrintRelease.aspx?relid=95813> Last accessed on 17 October 2019
- 2 Government of India. 2014. Beneficiaries from anganwadi centres. New Delhi: Press Information Bureau, Ministry of Women and Child Development. <http://pib.nic.in/newsite/PrintRelease.aspx?relid=103220> Last accessed on 17 October 2019
- 3 World Economic Forum. 2018, July 18. India's women are the secret to a potential economic boom. <https://www.weforum.org/agenda/2018/07/india>. Last accessed on 17 October 2019
- 4 Burl, D. 2018, January 16. At these crèches, kids of domestic helps feel at home. Times of India. <https://timesofindia.indiatimes.com/city/bengaluru/at-these-creches-kids-of-domestic-helps-feel-at-home/articleshow/62514604.cms>. Last accessed on 17 October 2019
- 5 Kingdon, G. 2017. The private schooling phenomenon in India: A review. Bonn, Germany: IZA Institute of Labor Economics. <http://ftp.iza.org/dp10612.pdf> Last accessed on 17 October 2019
- 6 District Information System for Education (DISE). 2016. Elementary education in India (2014–2015). New Delhi: NUEPA. http://dise.in/Downloads/Elementary-STRC-2014-15/Elementary-State_Report_Cards_2014-15.pdfhttp://mhrd.gov.in/sites/upload_files/mhrd/files/statistics/ESG2016_0.pdf Last accessed on 17 October 2017
- 7 Jadhav, G., & Borges, V. 2017. Parent perceptions of appropriate ECCE practices Mumbai: Muktaangan. <http://www.muktanganedu.org/wp-content/uploads/2017/12/Parent-perceptions.pdf>. Last accessed on 17 October 2017
- 8 Government of India. 2016. Educational statistics at a glance. http://mhrd.gov.in/sites/upload_files/mhrd/files/statistics/ESG2016_0.pdf Last accessed on 17 October 2019
- 9 Government of India. 2018. Economic Survey 2017–2018. <http://mofapp.nic.in:8080/economicsurvey/> Last accessed on 17 October 2019
- 10 Government of India. 2011. Report of the sub-group on adolescents for the tenth five year plan (2002–07). New Delhi: Planning Commission
- 11 Global Initiative on Out-of-School Children. August 2014. All in School– A Situational Study Of India
- 12 The World Bank. 2009. People with disabilities in India: From commitments to outcomes. Washington, D.C.: The World Bank.
- 13 Borooah, V. K. 2012. Social Identity and Educational Attainment: The Role of Caste and Religion in Explaining Differences between Children in India. *The Journal of Development Studies*, 48(7), 887–903. <http://doi.org/10.1080/00220388.2011.621945>
- 14 Ramachandran, V. 2014. Equity and Quality are Two Sides of the Same Coin in India's School Education. Nehru Memorial Museum and Library. New Delhi
- 15 The World Bank. 2017, September 26. World Bank warns of 'learning crisis' in global education [Press release]. Washington DC: The World Bank. Retrieved from <https://www.worldbank.org/en/news/press-release/2017/09/26/world-bank-warns-of-learning-crisis-in-global-education>
- 16 <http://educationportal.mp.gov.in/GoogleMaps/Public/AboutGis@Schools.aspx>. Last accessed on 19 October 2019.
- 17 Bhatt, Kiran (2017) Out-of-School Children. *Economic and Political Weekly*, Vol 52, issue 49 Dec 2017
- 18 Rustagi, P., Mishra, S.K. & Mehta, B.S. 2011. Scheduled tribe children in India: Multiple deprivations and locational disadvantage [IHD–UNICEF Working Paper Series on 'Children of India: rights and opportunities']. New Delhi: IHD–UNICEF.
- 19 UNICEF. 2011. The state of the world's children 2011: Adolescence – an age of opportunity. NY: UNICEF.
- 20 The World Bank. 2009. People with disabilities in India: From commitments to outcomes. Washington, D.C.: The World Bank.
- 21 UNICEF. 2011. The state of the world's children 2011: Adolescence – an age of opportunity. NY: UNICEF.
- 22 NCERT, 2010. Adolescent Education Programme, New Delhi. p.1
- 23 Ramachandran, V., & Naorem, T. 2013. What it means to be a Dalit or tribal child in our schools: A synthesis of a six-state qualitative study. *Economic and Political Weekly*, 48(44), 43–52.
- 24 Ignus Pahal is a not for profit organisation working to improve the quality of education systems, founded by the author in 2003.

6

CHILDREN'S PARTICIPATION

A Practitioner's Perspective

RITA PANICKER



Introduction

Development discourses in the 1960s, 70s and 80s pitched children's issues within the framework of welfare and not within the framework of human rights. Therefore, most programmes for children would be tagged within women's programmes or it would be a health and education issue, seen from a medical need, especially nutrition and vitamin deficiencies, immunisation or that of enrolling children in schools. One of the largest programmes during the 1970s was Mother and Child Health programme (MCH). The primary concern at that time by the state and civil society organisations was to prevent children from dying of preventable diseases and to enhance the nutritional intake of poor vulnerable children and improve enrolment of children in schools.

The concept of peoples' right to development participation was still evolving. Children were not seen as a constituency by themselves to be recognised and given its due importance. The concept that they had a fundamental right to participate in processes where decisions were taken regarding their lives was not thought of. In fact, the right to participate is a most complex concept.

Placing the concept of children's participation within the framework of UN Convention on the Rights of the Child (UNCRC) is important, as it was 'the' international instrument that guaranteed children this right. UNCRC guarantees an entire range of rights from civil to political, social, economic and cultural. Additionally, UNCRC Article 12, grants a child the right to express freely in matters affecting him or her and these views must be given due importance/weightage. All other following Articles – 13, 14, 15 and 16 actively support the implementation of Article 12. The ratification of UNCRC brought in a paradigm shift in the development world, especially when it came to children's well-being and their agency.

UNICEF and international funding agencies developed guidelines on children's participation. In addition, researchers wrote about what constitutes children's participation. However, underpinning it was the idea of children's participation solely in programmes, projects, activities, research, events and therefore the need to have guidelines. The idea that children have their own agency was not explored extensively. Prof. Roger Hart and Prof. Judith Ennew were the two

scholars in the 1990s who wrote substantially on the subject. They drew upon grassroots NGOs' experiences to draw lessons and also to analyse it within the political, social and cultural framework.¹ Many practitioners have been inspired by their writings.



Right to participation and to be heard is considered as one of the cardinal principles on which (community) development is based. To participate in decision making processes is seen as a fundamental right. Adults hold this right. Men, youth, and to some degree women. It is out of this right that all struggles for empowerment, political, civil and economic have been fought and won. Interestingly, this right was not given to children.

Children have economically participated in varying degrees and in some societies playing a crucial role in family economics. Young boys have historically participated in wars across the world; children as young as 12 years were part of crusades in the 13th century in Europe. In present times, children continue to be inducted into armed struggles by opposition warring groups.

As adults we have used children in political and economic spheres when we so desired. They become an actor or a victim as the situation changes. Power and interests regulate relations between adults and children.² The relationships between adults and children are socially and culturally constructed. Whilst many of the supposed differences between children and adults may be socially constructed, adults' power over children "means that merely in relation to adult's praxis.....children have no claim on equal treatment because they are not old enough".³ Adults' recognition of this right is important and they should be prepared to concede power to share decisions with children.⁴

In the early years of our work with children prior to UNCRC, we involved children in decision-making processes as Butterflies was founded on democratic values. Therefore, it was logical continuum of our approach in working with children. Social work practice in the area of community work have stressed the importance of community participation.

"It will be futile to discuss about children's participation without considering power relations and the struggle for equal rights. It is important to acknowledge that not everyone is a part of the community in the same way and do not enjoy equal power and access to resources. Children from disadvantageous groups face double deprivation because of their age and marginal position of their community in the society. Therefore, there is a dire need to create opportunities for children especially from disadvantageous backgrounds to learn to participate in programmes, which directly affect their lives. It is only through participation with others can these children learn to question discrimination and repression, and to fight for their equal rights. It is important to recognise that participatory development not only facilitates inclusionary spaces but also creates room for alternative perspectives and voices that fosters critical thinking in children. An inclusive participatory space is very essential for children to learn to respect diverse perspectives and become tolerant of difference of opinions".

Source: Manocha, S and Panicker, R. 2017. Children's Participation in Governance: Andaman Nicobar Islands Experience, Butterflies.

Dialogues and discussions are very crucial for children to discover different points of view and reach a consensus. Jean Piaget was a Swiss psychologist known for his work on child development. Piaget's theory of cognitive development and epistemological view are together called "genetic epistemology". He placed great importance on the education of children. Piaget argued that if children are always subject to authority and do not have opportunities for establishing rules through relationships with mutual respect, they cannot develop as autonomous selves. The blooming of a personality through the development of autonomy depends then on these social relationships.

Child Participation – From Tokenism to Value

To understand child participation, we will examine the concept and how it has developed over the years and draw upon the experience of Butterflies, one of the earliest organisations in India that started working on this issue.

In 1988 when Butterflies began its work informally, (it was not a registered charity), with street connected children in Delhi, testing the ground, UNCRC had yet to be adopted by the UN General Assembly. The idea of children's participation, non-institutional care was unheard of. In the initial years, practitioners and theorists were critical of us when we gave space to children to share their views and insisted that they need to be part of the deliberations. However, once UNCRC was ratified by India (1992) and international funding agencies started to question the role of children in various NGO programmes, children's participation became a buzzword spoken by almost all organisations working with children.

Organisations planned and budgeted children's participation 'activities.' Participation was seen as a project and not a value subscribed by the organisation; respect for children's agency nor a culture of democracy permeated the organisation.

In the race to be seen as an organisation that values participation, organisations would select children, older adolescents who are articulate and good communicators to represent the organisations in public fora be it at conferences, press briefings, giving testimonies, so on so forth. Children would participate in conferences, struggle to discuss issues on which they had limited knowledge and, in some instances, there would be a complete disconnect from the children who they represent and who were the most marginalised.

Children's participation as a concept has been largely interpreted by practitioners on theories emanating from the west. The most common questions posed to implementing organisations by international agencies was the level of children's participation in the organisation. Were the children in charge? Were they part of planning programmes and its strategies? Are they members of the governing board – part of the hiring and firing processes of staff, budgeting and how the funds must be spent? The emphasis was on 'rights'. In this whole process of making children 'in charge', one completely lost the core value or rather spirit of participation.

These children/adolescents participate in most of the public events of the organisations and become 'professional conference goers' and their identity is defined by their being 'child participants' or 'child representatives'.

It was therefore not unusual to find children being brought by international NGOs (INGOs) to international meets and find them sitting in all adult meetings, often bored and tired, totally out of depth, and mouthing prepared scripts as they were trained to. The tragedy was compounded by the fact that feted and publicly acknowledged as 'leaders and spokespersons' for children, their own lives seldom changed. Hence their need to constantly pretend to be under 18 years of age!

Children's participation does not mean all the above. One can witness the ugliness of power since as mentioned earlier, it is difficult for adolescents to give up positions of leadership. By harping on rights, alone we miss the importance of responsibility, which is the flipside of rights. Children are vocal in demanding their rights but are silent on their responsibilities. Children have to understand that rights come with responsibilities.



The primary concern must be to ensure that in all initiatives which involve children their participation is genuine not tokenistic and adult driven. Neither should young adults masquerade as older adolescents.

CHILDREN'S PARTICIPATION IN LOCAL SELF GOVERNANCE IN KARNATAKA

Bhima Sangha – Agents of Change

When in 1990, members of Bhima Sangha,ⁱ the first union of working children in Asia, stood up against violation of their rights – they surged their way collectively into policy and decision making spaces, demonstrating protagonism of children – especially of those from highly vulnerable communities. There were many adults who were shaken out of comfort zones by their incisive commentary about their realities; astounded by their insights and wisdom; inspired by their courage; moved by their sense of justice, fair play and solidarity. They were officially invited to government offices for discussions and their own efforts to address child rights violations were taken note of and often appreciated.

Bhima Sangha at times faced criticism from those who questioned their stands and their processes – this included those who questioned the ability and agency of children and also those who did not make time to understand 'how' and 'why' children arrived at certain views and made certain choices. Many of the skeptics too turned grudgingly appreciative when they invested time in observing Bhima Sangha's processes. Bhima Sangha went on to be a founding member of the National Movement of Working Children and the International Movement of Working Children – engaging with decision makers from local to globalⁱⁱ arenas.

Yet in settings where debates about child labour become highly polarised and working children are criminalised, Bhima Sangha is subjected to tremendous pressure because the mainstream adult eco-system feels challenged by views that question status-quo. This is true of several rights based movements of young in India today.

Over the years, often on paper and sometimes in practice as well, in India, spaces for children's participation in matters affecting their lives are opening up – and it is important to recognise that in our country, it was the working children, as in most other parts of the world – who led the way of children to claim their right to participation.

In Karnataka, it was Bhima Sangha's persistent engagement with Panchayats to address and prevent exploitative labour of children that led to the formation of Makkala (Children's) Panchayats. These included representatives of Sanghas of school going children as well children with disabilities. Their collective slogan is 'children are citizens today'. The very first children's Grama Sabhaⁱⁱⁱ of India led by Makkala Panchayats was in 2002, in the remote village of Keradi. Such children's Grama Sabhas laid the foundation for children's direct participation in democracy in the Children's Grama Sabha model of Karnataka, which are now mandated by the Karnataka Grama Swaraj and Panchayat Raj Act^{iv} and obliges the 6200 Grama Panchayats of Karnataka to listen to and respond to children – as citizens.

There are no jobs here. Many of us migrate with our parents to work in other districts. After six months when we return, the schools are not taking us in and our future is ruined. Our parents should get jobs in our own villages without a break. We have raised many such issues before the panchayats and have tied red ribbons to mark our problems. They have assured us that they will solve these problems and within two months make sure the red ribbons will become white. We have taken their signatures on the list of problems given to them. If these problems are solved, we will join hands with the Panchayat and get involved with the work in our villages with even more enthusiasm.

Gangamma, Sudha, members of Bhima Sangha, Hiremallanakeri Panchayat, Bellary, 2019

i <https://www.concernedforworkingchildren.org/empowering-children/childrens-unions/> Last accessed on 30 October 2019

ii <https://www.cultureunplugged.com/documentary/watch-online/play/52727/Taking-Destiny-in-their-Hands>

iii On the lines of Adult Grama Sabhas as per the Panchayat Raj Act of the State

iv Children's Grama Swaraj. <https://www.youtube.com/watch?v=zMLSUotpBYs>

The more empowered children are with information and access to decision makers and the more enabled adults are to engage with children respectfully, more meaningful children participation is. Members of Bhima Sangha of several villages of the developmentally challenged Bellary district demonstrated this once more in September 2019.

They invited all children of their villages to 'drop' their issues into the 'problem bag' which was carried in all lanes and gullies with music and dancing. They next discussed the issues in detail and prioritised the issues based on urgency, need and coverage. The issues included lack of basic amenities (with locations/families affected specified), caste based discrimination, lack of vocational education opportunities for youth, lack of jobs for their families, distress migration, prevalence of child marriage, illegal sale of alcohol, abysmal situation of the government schools, non-payment of NREGA wages, non-payment of disability/old age/widow pension.

These were shared and discussed with the Panchayat president, members and the officials - where all these adults were highly receptive, frank and forthcoming.

To monitor the follow up of the assurance by the Panchayats, Bhima Sangha members have tied one red ribbon per problem to a tree at the entrance of the Panchayat office, to be a constant reminder. For each problem addressed, the red ribbon will be replaced with a white one. The Panchayats have agreed to have regular, periodic meetings with children to report back to children. *Such* issues which are outside the remit of the Panchayats will be collectively taken up at the Taluk level through the Taluk Task Force, which includes representatives of Bhima Sangha and Taluk level officials.

Kavita Ratna

Director, Advocacy, the Concerned for Working Children

"The poor in our villages are in a worse situation than animals which cannot speak... the government cannot only respond to the rich and the educated. They have to work for us too. A lot of assurances have been given to us. We will not remain quiet, if they do not fulfill them."

Vani, Bhima Sangha, Dasarahalli Thanda, Bellary, 2019

Children's participation in the political space is a subject that has been written and debated by academics and practitioners. Should children be allowed to exercise their franchise irrespective of their age, as argued by John Holt (American Educator), as long as they have interest in politics?⁵ Bob Franklin, makes a point, "the exclusion of children from full political status is an enigma which democratic politics should not allow what is at stake here is not simply the denial of citizen rights but the right to be a citizen".⁶ This is a contentious issue. There are problems with this proposition of children participating in politics. Politics is complex and layered based on ideologies, which children may not fully understand to make an informed choice. Furthermore, where does one draw the line when it comes to protecting children and the right to be active participants in politics? Age and maturity are socially constructed; it is based on various factors, such as, culture, economics, class, and socialisation. Since children are all persons below the age of 18 years, a key concept that needs to govern their participation rights is that of 'evolving capacity', which is based on age, ability and maturity.

NPC 2013: PARTICIPATION

- 4.14. The State has the primary responsibility to ensure that children are aware of their rights, and provided with an enabling environment, opportunities and supported to develop skills, form aspirations and express their views in accordance with age, level of maturity and evolving capacities, so as to enable them to be actively involved in their own development and in all matters concerning and affecting them.
- 4.15. The state shall promote and strengthen respect for the views of the child, especially those of the girl child with disabilities and children from minority groups, marginalised communities, within the family; communities, schools and institutions; different levels of governance as well as in judicial and administrative proceedings that concern them.
- 4.16. The State shall engage all stakeholders in developing mechanisms for children to share their grievances without fear in all settings; monitor effective implementation of children's participation through monitorable indicators, develop different models of child participation; and undertake research and documentation of best practices.

ANKUR SOCIETY FOR ALTERNATIVES IN EDUCATION AND CHILD PARTICIPATION

Ankur Society for Alternatives in Education has been working with children, young people and communities in marginalised neighbourhoods of Delhi, for more than three and a half decades. Ankur seeks to empower children and young people, through education so that they grow up to be independent, thinking beings who have the confidence to articulate their voice, navigate situations they encounter and strive for a life of dignity.

Child participation is integral to Ankur's discourse and practice in the area of alternatives in education. Ankur's pedagogical interventions are based on the belief that children are independent, thinking and sentient individuals with innate creativity. Ankur believes that their unique points of view and perspectives must be heard and respected within an egalitarian ethos of working with them, and their creativity needs to be nurtured.

Together with children, Ankur creates collective spaces where they are able to express and articulate their experiences freely, without any inhibition or fear. They are encouraged to reflect on their experiences. In the process, they co-construct knowledge about their lives and contexts. This process is propelled by a variety of listening, speaking, writing, reading practices and research. The collectives are self-regulated spaces where children take ownership by playing an active role in decision making. The relationship between children and the adult facilitators is like that of co-travellers engaged in conversations and dialogue, and not the conventional teacher-student relationship.

Recognising children's personhood and perspectives – Children and their communities tend to be looked upon in terms of lack, both at school and in society at large. Children are considered as lacking in intelligence and potential. Their communities are viewed as lacking in skills, knowledge, culture and initiative. In its work with children, Ankur challenges these presumptions by drawing upon the knowledge and creativity of children and the rich resources existing in their neighbourhoods, in terms of people's stories, skills, social networks and creative practices.

Ankur engages with children's active and playful imagination so that they find their own expressions, individuality and create their own meanings in life. This process enables a child's discovery of self-identity and personhood. Through various processes of the collectives, children are able to explore diverse modes and platforms to articulate and express their thoughts and experiences and raise questions. By their own explorations of their surroundings, children begin to understand, interpret and engage with the world around them. This process enables children to find their bearings and gives them the courage and capacity to look at plurality of truths.

Learning Collective (6-10 years) – The learning collective celebrates the spirit of wonder, curiosity, inquisitiveness, spontaneity and self-creation of young children. The collective

attempts to bridge the gap that exists between the books that children read or are “made to learn” from at school and the world they inhabit, by inviting children to relate their own experiences and imaginations to what they read. Unlike school, where children are expected to come up with a single answer to text book questions, here children are encouraged to come up with plural answers to a given question. They explore wide ranging themes from their everyday life, through multiple questions and varied resources.

Library (10–14 years) – At the library, books are not just meant to be read. Children are encouraged to view reading a story as a creative process with space for unique interpretations. Ankur believes that a creative reader then has the capability of playing with any story and enriching it through their imaginations and experiences. The library is a lively space that nurtures a community of children who are active readers, creative writers and passionate discussants.

Club (10–14 years) – The club is meant to be their own space that listens to and affirms their stories and life experiences. Children find an open floor to unload and unpack their fears, restlessness, dilemmas and dreams. It gives children the space to value play and freedom from the routines of school and home. It facilitates their exploration and research of their contexts through a variety of themes related to different facets of life in their neighbourhood. In the process children find meaning and form organic linkages between their life and the world around them.

Young Women’s collective (14–24 years) – The collective provides the context to strengthen peer networks, to facilitate their creative practice. It builds a culture of sharing and listening to generate critical and empathic accounts of self and contexts and facilitates exploration of gender. In the process, it helps build self-respect, dignity, articulation and assertiveness. This lays the ground for transformative agency among the participants, which radiates outwards to social relations around them.

Mohalla Media Lab (14–24 years)– The lab facilitates the engagement of young people with different forms of media, including digital media, to create and communicate the stories of their neighbourhood. They revisit the locality and city to produce narratives of ordinary lives. This process enables the creation of collective narratives of the community which are unique and original as they reflect the lived realities of people in working class settlements.

Thus Ankur’s practice rests on child participation and the capacity of children to be thinking individuals who are capable of discerning for themselves their course of action, at present and in future. Over the years Ankur has witnessed the emergence of young authors from working class neighbourhoods presenting authentic accounts of life on urban margins. They are becoming a voice for themselves and their communities and provoking a rethinking on their neighbourhoods and its inhabitants.

Over the years, child participation has gained traction in India and is also included in government’s policy documents.

The National Policy for Children (NPC) 2013 says, “Every child has the right to life, survival, development, education, protection and participation”. The National Plan of Action 2016 has identified it as key priority area –“Enable children to be actively involved in their own development and in all matters concerning and affecting them”(See Annexure for details).

NGOs and some state governments (Kerala, Karnataka, Rajasthan, Andhra Pradesh, Orissa to name a few) have facilitated children’s participation in governance through numerous children’s councils (bal sabhas), children’s panchayats (bal panchayats), parliaments, assemblies, federations, which negotiate with the adult political and administrative agencies to get their entitlements. This is another area where there is a compelling urge to facilitate children’s participation in governance, without

giving much thought to the question of ‘why’ and ‘how’. To quote 13 year old Sushanto, from Andaman Nicobar Islands:

“At the School Parliament if we raise issues concerning us, the teachers tell us not to act too smart. Now you tell us what is the point in having a school parliament. If children cannot speak without fear and raise issues as we are afraid of the Principal and teachers. From such a parliament what will we gain?”⁷

In some instances, they function and imitate adult structures. It is hierarchal with positions of Presidents, Vice-Presidents, Prime Ministers, Ministers, assuming similar roles and responsibilities as in adult structures. In the bargain children imitate and imbibe some of the power dynamics of the adult political structures. Who decides on these structures for children? Do we ask children? Are we thrusting children to play a role that we have not prepared them for? On the other hand, are we making the adults sensitive to children’s views and involve /consult them while planning a policy, law, programme, or infrastructure for them?

Despite the ratification of UNCRC by most countries including India, national governments, organisations still have not found a sustainable, effective mechanism to involve children in discussions, dialogue and decision-making processes.

Yet it is possible to see participation as a right of the child and not a favour bestowed on them by adults. Town planners would rarely think of consulting children while planning a township. Perhaps children would have ideas on where they would like schools, streetlights, bus stops, main roads and parks to be located.

Children’s views are hardly taken into consideration in most schools. Schools are one of the most hierarchal agencies in the lives of children. In instances where space for children to share their views exists, it is tokenistic. Schools do not engage children in the management of school calendar, play, sports and picnics nor on policies and laws that affect their lives. Teachers have no clue of the law-making process in the country, neither are they aware that children can input into a draft Bill. Practitioners try to engage children by educating them on the law-making process in the country and how they can participate in the process.

When the concerned Ministry drafts a new social or education policy or legislation, it is uploaded on the official website of the government, for comments from civil society. Butterflies writes the draft in child friendly language and shares it with children; explaining to them the nuances of the law or policy and that the government has sought views from everyone and their views are important. Their comments are then shared with the government. This has been a way to ensure that children participate in decisions that concern them.

To illustrate this point further, citing an action by Delhi Child Rights Club (DCRC), a forum of children from 21 NGOs in Delhi, who work together to seek solutions to their problems in the city may be useful. It could be about public toilets, open drains, street lighting, lack of public transport, absenteeism of teachers in school and lack of safe open spaces to play. The latter issue would come up at every meeting. DCRC members decided to do a survey of open spaces and parks in Delhi. Adults supported them during the discussions on the objectives of the survey and in developing the questionnaire and how and where they could conduct the survey. The children were surprised to discover there are 15,000 open spaces in Delhi but most of them not safe for children to play. Some of the spaces were taken over by real estate companies who had converted them to parking lots; some spaces were taken over by substance users and gamblers; and in majority cases, the resident welfare associations had made the parks into ornamental gardens. The resident welfare association members were concerned that children playing ball games in the park will hurt senior citizens and therefore left no space for playing ball games. Children had a consultation on the survey report and the outcome was that they would meet the Chief Minister of Delhi and share their report and solutions to the issue. One of the solutions of children was that they would have a dialogue with the senior citizens of the neighbourhood and work out timings when both the groups can use the park. Children suggested

that senior citizens could use the park when they are in school and after school hours, they too would be able to use the park. They also assured the senior citizens that they would take care of the flowerbeds and put a big net so that balls remain in their part of the park. The solution worked in some neighbourhoods. The Resident Welfare Associations are another classic example of an adult structure that gives no space for children to participate in decision-making processes.

Children in media is another contentious area. According to the International Federation of Journalists, the media's portrayal of children perpetuates a collection of myths: families in developing countries, children living in poverty and victims of war and disaster lose their individuality and humanity. They are often portrayed as helpless sufferers, unable to act, think or speak for themselves. If stories about children are to illustrate a truth, journalists need to know what lies behind the experiences they are writing about. That includes appreciating the rights of children, their right to security, anonymity and dignity.

However, there are a number of children's own media initiatives globally, which have given space to children to voice their opinions, views on issues that matter to them. Children are involved in bringing out their own newspaper, radio programmes, television programmes, photography and theatre. Some of the earliest initiatives were by organisations working with street connected children in Columbia, Brazil, South Africa, Kenya and inner city of New York. One of the first documented experience of children's newspaper was in 1976 called 'Children's Express' in New York. Unfortunately, after 26 years in operation with bureaus in various cities in USA, Tokyo, London and South Africa it closed down due to lack of funds.⁸ A few examples of similar media initiatives of and by children in India are - UNICEF spearheaded initiative of child reporters in Odisha and Lalitpur, Uttar Pradesh; 'Balaknama', an eight page quarterly newspaper by street children in Delhi associated with the NGO - Childhood Enhancement Through Training and Action (CHETNA); 'Radio Bachpan', a community radio programme by children from the Mushar community piloted in Bihar by Unicef; and 'Bachhon ki Nazar Se - Through the Eyes of a Child', a radio programme by the Butterflies Broadcasting Children (BBC) aired every Thursday on All India Radio - FM Rainbow Delhi 102.6 MHz at 4:45 pm. While sustaining such initiatives is a challenge, the 'Balaknama' and 'Bacchon ki Nazar Se' initiatives tell us that it is not impossible.⁹

Issues surrounding sex and sexuality is an area on which as adults we do not engage with children. The engagement is when there is a violation or for preventive actions. The idea that children might have their own views and perceptions on the subject has not been explored. It is time that we engage with them to understand their views on the subject, it might help us to understand children's actions better.

The Butterflies experience has shown that it is not difficult to organise children into a forum, children are articulate, and they have opinions on everything, very interested in sharing their views, and would be the most enthusiastic campaigners. What is important is how do we educate children the values of participation? What it means to be democratic.

Butterflies is concerned with this core value, where children's participation does not begin and end with children's councils, children's parliaments, children's newspaper, radio - these are symbols of participation, which is visible. In their endeavour to listen to children, Butterflies draws them into the process of decision-making, teaching children the principles of democracy.

The inevitable nature of child participation does not only stem from the UNCRC, rather, it has much deeper psychological, sociological, and anthropological roots. Various psychological and anthropological theories highlight the role of participation in learning. The situated perspectiveⁱ on learning explains that learning is not an individual process but children learn by participating in social practices.¹⁰

i The situated perspective can be contrasted with alternative views of learning, here, instead of defining learning as the acquisition of propositional knowledge, Lave and Wenger (1998) situated learning in certain forms of social co-participation. Rather than asking what kinds of cognitive processes and conceptual structures are involved, they ask what kinds of social engagements provide the proper context for learning to take place". Lave and Wenger [1991][3] argue that learning should not be viewed as simply the transmission of abstract and decontextualized knowledge from one individual to another, but a social process whereby knowledge is co-constructed; thereby emphasizing on the role of participation in learning.

KIDS HOLD GRAM SABHA TO CLAIM RIGHTS

Wednesday, 05 October 2016 | PNS | Bhubaneswar

For the first time children officially participated in a gram sabha to discuss their issues, entitlements and rights on the occasion of 'special gram sabha' organised on October 2 in Khandapada, a model child friendly constituency of Odisha.

On the occasion of 'Gandhi Jayanti' the special gram sabha was organised across the country to promote and ensure people's participation in the development of their village.

The children here in Khandapada didn't miss the opportunity to keep their demands in front of the people and their representatives.

The members of 'children and adolescent collectives' in Benagadia, Ranipada, Jogiapalli, Ranichhelli and Banamalipur gram panchayats of Khandapada block participated and presented a 'GP fact sheet' containing issues related to five child development programmes like anganwadi centre (Integrated Child Development Scheme), Integrated Child Protection Scheme (ICPS), education (SSA), health (NHM) and sanitation (SBM-G). They highlighted major issues related to poor infrastructure available in their schools like boundary wall that protects from all kinds of external dangers, non-availability of water in the toilet, an attached kitchen, and poor availability of sport equipment, books for library and equipment for the laboratory.

Most of the anganwadi centres don't have own building; so children lack space to read, play and dine and also there is no space for toilet and kitchen.

Along with this, they raised the insufficient and poor quality of nutritional food given in the AWCs. Most importantly, the children raised the issues of child marriage prevalent in their areas and also issues of child labour, school dropout and also the gender disparity where child sex ratio is alarming and female foeticide is rampant.

Open defecation in these gram panchayats is pervasive due to only 20-25 per cent coverage of Swachha Bharat Mission. They also highlighted lack of facilities for children in healthcare institutions and inadequate coverage of regular immunisation to remote locations in the constituency.

In these historic moments, children, people of the gram panchayat and their representatives feel happy to get children onboard to work on their rights and ensure their participation in decision making at the grass roots. In most of the gram panchayats, the elected representatives received the agenda prepared by the children and listened to the genuine demands by the children on the issues.

In Jogiapalli and Benagadia panchayats, the 'gram sabha' passed resolution to construct school boundary, provide pipe water connection to schools and immediate construction of toilets. In Ranichheli gram panchayat, the gram sabha resolved for a regular debate on children's issues.

Source: <https://www.dailypioneer.com/2016/state-editions/kids-hold-gram-sabha-to-claim-rights.html>

Therefore, it is understood that participation begins with families. When we mention educating children about democratic participation, it suggests socialisation. Families have to be democratic for children to learn and imbibe those values. Parents have to realise and reflect on their parenting knowledge and skills that children have their own agency, which has to be respected. Children have a right to ask and be heard/listened; consulted when decisions are made on their behalf.

Conclusion

Children's participation is possible in matters that concern them. However, it must be genuine and not tokenistic or a fetish. It is a value that must instill rights and responsibilities in children so that they can play a role in asserting their citizenship.

In our endeavour to make children's participation genuine and sustainable, it is important to facilitate life skills education with children and work with families, communities and schools. There are evidences where children have been able to negotiate with their parents regarding continuing education, participation in sports, especially in the case of girls, prevention of early marriage. Apart from families, communities and schools have to be open to children's participation and involve them in decision-making processes. There has to be a culture of democratic values in families, schools and communities for children's participation to become a norm.

It is clear that it is essential to take a position that there is a need to educate children about democratic values through practices that enable them to grow up to be democrats. The democratic values should enable children to learn to acknowledge and respect diversity, value voices of dissent, follow democratic means to come up with socially just decisions. Democratic participation should teach children to profess these values in real life and in their relationships. These values should empower children and give them tools to understand and challenge gender, ethnic, language, religion and caste discrimination. The aim of democratic participation is to enable children to grow into adults who know how to translate equality and social justice into practice and live a life that is democratic. That for us is democratic participation.

Annexure 1

National Plan of Action 2016 (Extract)

Key Priority Area 4: Participation

Objective

Enable children to be actively involved in their own development and in all matters concerning and affecting them.

Sub-objective 4.1: Enable children to express their views freely on all matters concerning them.

Key Strategies:-

Priority Action

- Create a positive environment for children to express their views freely at home and at school, and promote respect for the views expressed by children.
- Orient teachers and frontline health service providers so that child survivors of abuse and exploitation are not treated in a condescending manner and steps taken to re-build their self- esteem

Sub-objective 4.2: Ensure that children actively participate in planning and implementation of programmes concerning them and their community.

Key Strategies:-

Priority Action

- Provide children with age-appropriate information on their rights and entitlements; schemes and programmes.
 - » Orient children on all forms (including online) of abuse, exploitation and violence; build their confidence to report any such incidence to CHILDLINE, police or local authorities and seek help.
- Strengthen Country and local mechanisms for participation of children.
 - » Provide children with an enabling environment to participate meaningfully in all plans and programmes
 - » Provide adequate support and referral to children dealing with physical or emotional stress through CHILDLINE services. Strengthen CHILDLINE services to disseminate information and provide support and counselling
 - » Ensure development of children in a gender –sensitive manner so that they learn to respect and understand opposite gender
- Orient parents to adopt parenting skills which promote positive behaviour and values among children such as hard work, respect for opposite gender, sportsmanship, etc.
- Build a sense of responsibility among children so that they are aware of their own duties and learn to act in a responsible manner
- Include a participatory approach in everyday classroom transaction by dedicating time and space for children to take an active part in teaching-learning processes, give their ideas and feedback freely
 - » Ensure a stress-free educational environment providing children equal opportunity to participate in the classroom processes
 - » Establish unanimous systems of providing feedback for children on various issues including behaviour of the teachers and staff.

Endnotes

- 1 Ennew, J. 2000. How Can We Define Citizenship in Childhood? Working Paper Series. Vol. 10, Number 12. Harvard Center for Population and Development Studies; and Hart, R. 1999. Children's Participation from Tokenism to Citizenship. Innocenti Essays. No. 4. UNICEF.
- 2 Hart, R. 1999. Children's Participation from Tokenism to Citizenship. Innocenti Essays. No. 4. UNICEF
- 3 Qvortrup, J. 1994. Childhood matters: An introduction. In J. Qvortrup et al (Eds) Childhood Matters, page 4. Aldershot: Avebury.
- 4 Lansdown, G. 2001. Promoting Children's Participation in Democratic Decision-Making. Innocenti Insights. UNICEF
- 5 Holt, John C. 1974. Escape from Childhood: The Needs and Rights of Children. Boston: E. P. Dutton.
- 6 Franklin, B. 1986. The Rights of Children. Oxford: Blackwell; & Ennew J. How Can We Define citizenship in Childhood? Working Papers, Volume 10, Number 12. Harvard Center for Population and Development Studies.
- 7 Manocha, S and Panicker, R. 2017. Children's Participation in Governance: Andaman Nicobar Islands Experience. Butterflies.
- 8 Cussianovich, A. 1995. Working Children and Adolescents: Culture, Image and Theory. NAT's Working Children and Adolescents International Review.
- 9 For more information, log on to:
<http://unicef.in/Story/637/30-village-child-reporters-geared-up-to-change-the-world>; Last accessed on 30 October 2019
https://www.unicef.org/infobycountry/india_50846.html; Last accessed on 30 October 2019
<https://balaknama.org/about-balaknama/>; Last accessed on 30 October 2019
<http://unicef.in/Story/964/Radio-Bachpan>; Last accessed on 30 October 2019
<http://www.butterflieschildrights.org/butterflies-broadcasting-children-bbc/> Last accessed on 30 October 2019
- 10 Manocha, S and Panicker R. 2017. Children's Participation in Governance: Andaman Nicobar Islands Experience. Butterflies.

7

ECOLOGICAL RIGHTS OF CHILDREN

GEORGE CHIRA

Photo Credit: Rakesh JV





Introduction

Ecological rights of children and environmental rights of children are often interchangeably used. The term 'ecology' refers broadly to the study of the relation among and between organisms and transformation and flux of energy and matter whereas environment refers to the natural world as a whole but also includes social, economic and other conditions. In other words, ecological rights of children refers more to children's relation with the natural universe and the right to nature whereas the environmental rights include the right to nature plus the social and other conditions surrounding children. This necessarily also includes "the consideration of political and economic forces on children's lives and an openness to incorporating theory and methods from all relevant disciplines of the social and environmental sciences".¹

Report of the office of the UN High Commissioner for Human Rights on the relationship between climate change and human rights (2009) says, "While the universal human rights treaties do not refer to a specific rights to a safe and healthy environment, the United Nations human rights treaty bodies all recognize the intrinsic link between the environment and the realization of a range of human rights, such as the right to life, to health, to food, to water, and to housing."²

The rights of children to survival, development, protection and participation all can be realised only through the instrumentality of a healthy and intact environment. This has been repeatedly recognised by different UN committees and panels. For example – children's health depends largely on a healthy environment which provides safe potable water, sanitation, sufficient food and housing. These can further be expanded to clean air, both indoors

"Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. Both aspects of man's environment, the natural and the man-made are essential to his well-being and to the enjoyment of basic human rights – even the right to life itself."

Stockholm Declaration of the United Nations Conference on the Human Environment, 16 June 1972.

and outdoors and availability of space for leisure and play. It is the ecology and environment which provides all the goods and services required for a healthy existence. Thus, whether explicitly stated or not, environmental and ecological factors become essential preconditions for children's rights. If children's rights are to be upheld through effective implementation, it becomes inevitable that the environment and ecology are protected.

The UN Convention on the Rights of the Child, 1989, (UNCRC) does not recognise this comprehensively through an explicit assertion. Yet there are some explicit mentions of the environment and many indirect references to this in different articles of the Convention.

“States Parties shall recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.” (Article 24.1 of UNCRC)

“To combat disease and malnutrition, included within the framework of primary healthcare, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution.” (Article 24.1 of UNCRC)

“State Parties agree that the education of the child shall be directed to the development of respect for the natural environment.” (Article 29.1 and UNCRC)

Article 6 recognises the right to life and Article 27 implicitly refers to the environment. Further there are indirect references to environmental rights in Articles 28, 29 and 31. Even Articles 12 and 13 of the UNCRC, indirectly relate children's rights to the environment, which guarantees children right to participation and recognises that their opinions be heard and considered effectively too.

This apart, today it is widely agreed that a healthy environment and an intact ecology are essential preconditions for guaranteeing the rights of children. Children, as is the case with all humans, are part of the ecological system and the interdependence of each element of the system is well settled. In other words, the ecosystem provides the goods and services required for survival, growth and development. The right to life in reality becomes a right to coexist and from the point of view of the child, the right to nature.

The preparatory discussions to UNCRC included a debate on the environmental rights which have continued subsequently. There were different positions taken during the debates. One argument was that since environmental rights are fundamental to all human rights conventions and are already recognised through different declarations and conventions, they did not warrant a repetition in the UNCRC. The other view was that precisely due to the fact that these are preconditions to the realisation of children's rights, for that matter any human rights, these needed to be recognised explicitly as part of a Convention meant for children.

In the final version of the UNCRC, no clause was included by guaranteeing the ecological or environmental rights of children. But these rights are still explicitly and indirectly referred to in different articles of the UNCRC as demonstrated above. For example, Article 24.2(c) demands the States to take into account ‘the dangers and risks of environmental pollution.’

The children's right to health largely depends on access to clean air, water and sanitation, proper food and housing, etc. This right to health is fundamental to the right to life and survival and development. This can be ensured only in fulfillment of various other rights.

The three decades after the adoption of the UNCRC have witnessed massive environmental degradation and consequent ecological upheavals in the form of climate change, frequent natural calamities, irregular climatic conditions, and high levels of air and water pollution. Alongside there has been an increase in public awareness about the causes and effects of human-induced environmental degradation. People are experiencing the negative impacts or irregular rains, floods, landslides and erosions, frequent droughts, increased levels of pollution and contamination of air, water and soil.

All these are affecting food production and availability. The worst sufferers are those who are most vulnerable, particularly children from the poor regions and communities. Simultaneously, over exploitation of natural resources, destruction of biodiversity, deforestation and polluting of soil and earth, points towards a bleak future for the children of today.

The awareness of the causes and the need to control human induced environmental destruction also has grown. As a result, integral relations between human rights and environmental standards also has been highlighted and recognised.

Thus it is clear that the environmental rights and an intact ecology are fundamental and a precondition to the realisation of children's rights. This is also generally accepted today and has been reiterated by different UN Committees on various occasions.

Environmental Rights of Children in India

According to a WHO report in 2016, out of 194 countries, India reported the largest number of young children (below 5 years) dying due to air pollution - at least 100,000 children died.³

Globally 1.7 million children die every year due to polluted environment according to the updated records of WHO, dated March 6, 2017. While 5,70,000 die from respiratory illness, 3,61,000 die due to diarrhoea mostly caused by unsafe water. More than 1 in 4 deaths of children under 5 can be attributed to unhealthy environment.⁴

The Director General of WHO – Dr. Margaret Chan sums it up – “A polluted environment is a deadly one particularly for young children. Their developing organs and immune systems and smaller bodies and airways make them especially vulnerable to dirty air and water.”⁵

According to a Water Aid report of 2016, India has the most people (nearly 76 million) with no access to clean water and 3,15,000 children die every year due to diarrheal diseases.⁶

India accounts for the second highest death rate of children under 5 years due to environmental risks, mainly pollution and poor sanitation. It records 248.14 deaths per lakh among under 5 children.⁷

TABLE 1: DIRTY ENVIRONMENT AND AIR POLLUTION KILLING CHILDREN: TRACK RECORD OF BRICS COUNTRIES

BRICS countries	Total population (in thousands)	Under 5 mortality rate attributable to environment (2012)	Under 5 mortality rate attributable to air pollution (2015)	Percentage of children aged 0-59 months who are stunted
Brazil	207,848	41.38	16.4	7.1
Russian Federation	143,457	30.39	9.6	NA
India	1,311,051	248.14	47.7	47.9
China	1,383,925	89.72	10.7	9.4
South Africa	54,490	124.33	40.5	23.9

Source: Don't Pollute My Future: The impact of environment on children health, WHO, 2017

Chemical Pesticides and Fertilizers

There is no aggregate data available on the number of children affected by chemical fertilizers and pesticides. A study in Andhra Pradesh and Telangana which together consume about 24 per cent of the total chemical fertilizers and pesticides in the country is very revealing.⁸ Different studies in Hyderabad concluded that the chemical and pesticide deposits in children were directly proportionate to the amount of fruits and vegetables they were consuming. These chemical fertilizers and pesticides have direct impact on water and soil as well.

In spite of India's impressive economic development, her children still go hungry and malnourished. 38.4 per cent children below 5 years are stunted while 21 per cent wasted, according to a report by 'Call to Action for Poshan Abhiyan Elected Representatives.'⁹ This is largely due to non-access to food and nutrition that comes from nature. Assessing the lung health of children, 40 per cent of children surveyed were rated as poor or bad in Delhi while the percent in Bengaluru was 36 per cent, Kolkata 35 per cent and Mumbai 37 per cent in 2015.¹⁰

Some Specific Instances and Reports

The Endosulfan story from Kerala is by now well known.¹¹ Aerial spraying of endosulfan was done in cashew plantations spread over 4500 hectares around 15 villages in northern parts of Kasargod district in the State of Kerala from 1976 onwards. The cashew plantations belonged to the Plantation Corporation of the State Government. Since 1979 the local community noticed and reported health effects in the animals and among people. Significant neurological impairment among people aged less than 20 years were reported. Since 1995, 500 deaths¹² have been recorded and thousands of people, mostly children with neurological and congenital deformities suffered with this. Though endosulfan is banned in principle, it is yet to come in force. Meanwhile, there are various other deadly pesticides that are commonly used. If this sounds like an extreme story, consider the cotton fields of different states like Gujarat, Andhra Pradesh, Karnataka and Maharashtra.

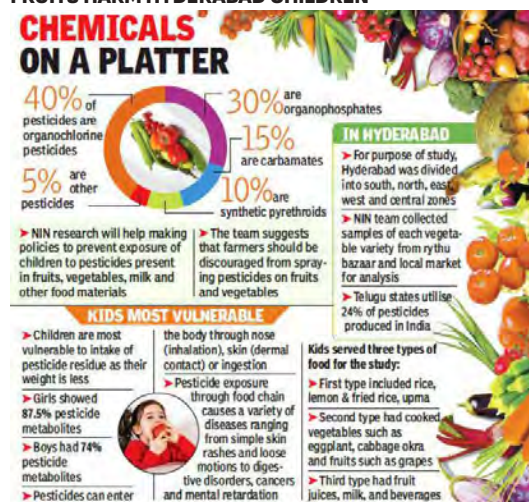
Children are employed at the expense of their school and health for numerous dangerous and tedious tasks ranging from pollination of plants to spraying of pesticides and others. Children and young people working on these fields complain of headaches, vomiting, tremors, various skin ailments and respiratory complaints. Jana Chetna,¹³ an organisation working in Raichur documented such cases and also provided treatment. This much for pesticides and chemical fertilizers. What about the industries? Tirupur is the headquarters of the district and has a concentration of textile industries particularly hosiery. The Noyyal river originates in the nearby hills and passes through Tirupur and Coimbatore. This river is the lifeline of this region. People drank water, washed their clothes, bathed and also used it for agriculture. Today, the Noyyal river is an effluent-carrying channel. It is totally contaminated and polluted because of the untreated industrial effluents, particularly from the bleaching industries established on the banks of this river in Tirupur and also domestic waste let into the river.¹⁴

The World Watch Institute¹⁵ has observed – "Perhaps it is one of the worst chemically contaminated river basins." Children in more than 100 villages situated throughout its course on both sides complain of skin diseases and other disorders. The water can now no more be used for drinking or irrigation. With failure of agriculture due to the polluted river, children are facing malnutrition, water borne diseases, respiratory diseases and cancer in some cases. The young girls in the villages look anaemic and boys are stunted.¹⁶ A local Civil Society Organisation (CSO), Care Trust, has been supporting the people who are struggling in different courts of law.

Mining

India is blessed with significant mineral resources, natural stones, oil, gas and even sand. Mining operations have a long history in India. These always start with the promises of growth and development. But mining means taking over of large tracts of lands, many a times displacing the people who live on that land. On the one hand families including children are displaced and on the other they

CHEMICAL CONCOCTION: PESTICIDES IN VEGGIES AND FRUITS HARM HYDERABAD CHILDREN



Source: <https://timesofindia.indiatimes.com/city/hyderabad/chemical-concoction-pesticides-in-veggies-and-fruits-harm-hyderabad-children/articleshow/65126763.cms>

are forced into being contract labour. Depending on the size and the nature of mining, many children become child labour, either directly involved in the process or involved with ancillary processes. The effect is that children miss school, they have no proper food and they are continuously exposed to dust and unsafe water. Even the babies and toddlers brought along by the mothers are exposed to dust, polluted air and water. The children's rights to survival, development, and protection are continuously violated.¹⁷

There are many more such cases where children's rights are not being honoured or realised and wherein children's rights are violated due environmental and ecological causes. It is certainly the responsibility of the government, the non-government actors, the parents, and the schools and teachers who actually are the duty-bearers to protect children's rights. As mentioned above, the violations of children's rights are directly caused by the environmental and ecological factors.

Protecting Children's Environmental Rights

In the absence of direct reference and an explicit clause on environmental rights in the UNCRC, most of the duty-bearers are silent in this matter.

The Government of India, the primary duty-bearer has not taken cognizance of the violation of children's environmental rights. In the last concluding observations of the UNCRC committee, they have even advised the Government to take note of this through the following recommendations.

“Ensure that appropriate resources are allocated to the health sector, with particular attention to specific maternal and child healthcare policies, programs and schemes to improve the health situation of children, in particular to respond to the high rates of acute respiratory infections, malnutrition, and diarrhoea.”¹⁸

“Ensure the effective implementation of the National Food Security Act, 2013, which contains provisions aimed at combating children's undernourishment.”¹⁹

These recommendations in effect are calling upon the government to protect the environmental rights of children. However, it has been difficult to find any response from the part of the government.

The case of Delhi which scored first place in air pollution in the recent past is a good example. There has been very little action to protect children, than closing down schools. While millions were spent for air purifiers in the Government offices, the schools and children's spaces got no consideration. The Graded Response Action Plan (GRAP) of the Delhi government also did not focus on children who were the most affected due to their vulnerability. This is despite the fact that 40 per cent of Delhi's children fail in lung capacity tests.

It's heartening that the National Plan of Action for Children, 2016, commits to create a caring and protective and safe environment for all children to reduce their vulnerability in all situations and keep them safe in all places, especially public places.

Civil Society Organisations and Children's Right to Healthy Environment

Recognising the seriousness of the challenge, during the past decade, CSOs in India have come forward to promote and advocate the cause of ecological and environmental rights of children. This has come out of the endeavour to realise the right to participation of children and young people explicitly guaranteed in the UNCRC.

Coming together to exercise their right to participation, children and young people started undertaking various activities with the support of CSOs. The activities centred around the issues

and problems within their localities. The problems were unsafe water, disappearance of trees and open spaces, excessive chemicals in agriculture, and loss of biodiversity. These discussions brought the groups around to the scene of environment and ecology. Organisations like terre des hommes Germany - India programme and its partners played a significant role in facilitating and supporting the young people to pursue their inquiry into these areas. They not only discussed among themselves but got together at regional and national levels to share their observations and gather more information. They deepened their study and further even started finding the causes behind the deteriorating situation. Organisations in Tamil Nadu, Karnataka, Maharashtra, U.P., Orissa, West Bengal, Madhya Pradesh, Uttarakhand, Rajasthan, and Delhi took the lead in advancing these concerns.

Civil Society Organisations have tried to highlight the situation of environmental rights of children in the mining sector as well. As indicated above, the children affected by mining suffer from serious violation of their rights, including the environmental rights.

A proposal was made by different CSOs led by Samata, Vishakhapatnam and HAQ: Centre for Child Rights, Delhi, to consider children as a special stakeholder among the affected community in the instances of mining or other infrastructure projects that led to displacement and / or relocation. This would require that children's special needs like health facilities, schools, spaces for leisure and play and housing be recognised separately as part of rehabilitation package in cases of displacement and relocation.

Actions by Children and Youth

According to various reports and articles available in newspapers and other media, a section of the young people consisting of children and youth are acting on their own for claiming their rights, particularly environmental rights. Having come together in order to defend their rights in general they have moved to act positively in protecting the environment. Examples of these are available in the forms of such groups protecting water sources like ponds, rivers and rivulets, planting trees, protecting forests, making biodiversity registers and protecting soil, segregating garbage, campaigning against plastics and excessive use of chemical fertilizers and pesticides. These young people create awareness among the population and volunteer their labour towards environmental protection. There are also those who are protecting the mangroves in the coastal areas, some of them are engaged in promoting organic agriculture as well. They also advocate the promotion of such measures by the community and the local governments like PRI institutions and municipalities. Though small in numbers they are making an impact in their own localities and regions. They also seek out the support of the government institutions in their efforts.

Thus environmental rights of children have now become known and is discussed in different parts of the country though it has not yet received any large scale official patronage. The children's groups and the youth groups supported by the CSOs were even able to connect internationally. They sent their inputs and demands to the international conference in Rio in 2012 and also continued their efforts.

Ritu was elected by her peer group of children to represent them at the UN Day of General Discussions at Geneva and to talk about air pollution in Delhi and its impact on children. She joined the discussions and made presentation about her experiences in Delhi. Ritu's submissions and demands were based on her experiences. She asserted the right to air for everyone and said our home should be made in such a way that there are windows on both sides. We should be able to plant trees outside our homes, in streets next to our homes, and in parks. There should be grass and trees in the parks that can absorb and reduce pollution in the air. Trees should line the road rather than lines of welcome and big hoardings. Clean air and a healthy environment is the right of all children, asserted Ritu.²⁰

Delhi has witnessed other initiatives from youth groups and also from CSOs like "Help Delhi Breathe."²¹

YOUNG PERSONS TAKE THE LEAD TO FIGHT POLLUTION

In 2016, young persons were invited from Delhi to the General Day of Discussions by the UNCRC Committee in Geneva. Ritu represented her peers in the country and made an inspiring presentation on air pollution in Delhi. Ritu, born on 21-10-2000, resides in Khirichipur in a working class settlement. She is part of a young peoples collective organised by Ankur Society, Delhi.

Her engagement with environmental concerns began at school and the Ankur collective. She relates to what she is being taught about the conditions and experiences in her surroundings. At school, they have been taught about environmental pollution and its causes, climate change, depletion of ozone layer as a result of pollution and how the ultraviolet rays are leading to respiratory diseases as well as other ailments of the eyes, throat and brain. These issues have also been highlighted in the newspapers and television programmes. She is deeply disturbed to learn that Delhi is one of the most polluted cities in the world, particularly in terms of air pollution and thousands are suffering from breathing problems. She can see rampant construction going on in the vicinity of her neighborhood and elsewhere in the city for the Metro rail project, shopping malls, highways, flyovers or residential complexes. The dust from the construction materials and processes and smoke emanating from the machines are clearly factors causing air pollution. The smoke emitted from thousands and thousands of vehicles on the city roads cannot be missed.

Ritu is deeply concerned about the effects on the construction labourers and their children who play at these sites and also those who live on the streets. Children in particular are very vulnerable. She wonders if what is happening in the name of development adversely affects the natural environment, and the health and being of the people.

"The city is being built everyday but our spaces to breathe are shrinking," says Ritu.

UNCRC Committee, Day of General Discussions

After the adoption of the UNCRC in 1989, the discussions on the environmental rights did not surface for some time. The subsequent environmental conferences such as the Earth Summit of 1992, the Koyoto Protocol and the different conferences including the Conference on Sustainable Development (CSD) in 2012, all included reference to the impact of environment on human rights including children's rights. By 2012, the preparatory meetings of the CSD, the children's rights groups in different continents and the children's groups themselves had already got activated. Different instances were recorded wherein individual or groups of children already approached the courts at different places wanting to establish the justiciability of their rights to an intact ecology and safe environment. All these discussions were also being reported to the UNCRC committee on various occasions. This led to the committee redirecting its General Day of Discussion of the year 2016 to the Environmental Rights of Children.²²

The discussions started with the assertion that though the impact of environmental degradation on children's rights was well admitted, the relation between children's rights and environment was still not clear. It was important to clarify this relation and enhance the knowledge on children's rights to a safe environment.

The discussion brought together experts from different sectors and also representatives of children themselves from different continents. They were devoted to debating on the context of children's rights and the environment currently particularly the climate change which was impacting children's lives today and in the future.

Violations of children's rights causing irreversible harm and even impacting future generations were also considered. The effect of pollution and its impact on health and the special vulnerabilities of children too were considered. The discussions went on to analyse the positions already included in

the UNCRC and further to define children's environmental rights. It also examined the key elements of the relationship between the environment and children's rights. Justiciability and the obligations of State parties were also considered.

The agency of children as change makers and the role of Civil Society Organisations were also debated upon. The Day of Discussions concluded with recommendations to the State, policy makers and also Civil Society Organisations.

It called upon the UNCRC committee itself to focus on the context of the fragile environmental situation and pursue a child rights based approach in order to resolve the situation. The right of the child in a healthy and sustainable environment needs to be further articulated and highlighted. The obligations of the State parties relating to the climate change and children's rights particularly those children who are directly affected need to be emphasised. It also advised the committee to provide guidance to State parties on implementation of the environmental rights of children.

As far as the civil society is concerned, the recommendations included creation of awareness and collection and dissemination of information, support to children and young actors. The civil society can also be a stakeholder by advocating the recognition of children's environmental rights by state and non-state actors at different levels. Further the children's rights organisations were advised to integrate environmental concerns and issues in their policies and programs. It was important for integrating the child rights elements and the environmental elements towards a holistic approach to realizing children's human rights fully.

Conclusion

Over the last few years there has been an effort to create a demand for an optional protocol on environmental rights of children, like Optional Protocol on the Involvement of Children in Armed Conflict (OPAC) and Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC).²³

This has been discussed at the preparatory meetings of the 2012 Conference on Sustainable Development (CSD). The same has been proposed to the UNCRC Committee. In India, children's rights groups have been coming together with environmental groups on issues like protection of biodiversity, conservation of water and water bodies, and protection and preservation of mangroves in States like Tamil Nadu, Karnataka, Maharashtra, U.P., Madhya Pradesh, Uttarakhand, Orissa, and so on.

As far as the recognition of children's right to a safe environment and impact on ecology is concerned, so far the ball is very much in the courts of the CSOs, particularly in India. This is also true of most other countries. However, this is certainly a firm beginning; in fact the whole idea of UNCRC itself was initially part of the civil societies' discussions and debates which subsequently got an unprecedented international acceptance. Even in India, quite a few of the progressive legislations, schemes and measures which are now owned up by the Government, emerged out of civil societies' discussions and actions. So, the stage is getting ready and the recognition of children's environmental rights, will be fulfilled sooner or later.

Endnotes

- 1 Children's Environments Research Group (CERG). Ecological Study of Children's Lives. <https://cergnyc.org/archives/1479>. Last accessed on 15 July 2019.
- 2 United Nations Office of the High Commissioner for Human Rights (OHCHR). 15 January 2009. Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights (A/HRC/10/61), Page 7, Para 18. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/103/44/PDF/G0910344.pdf?OpenElement>. Last accessed on 30 October 2019.
- 3 Nandi, Jayashree. 30 October 2018. Air pollution killed highest number of under-5 children in India in 2016: WHO report. Hindustan Times. <https://www.hindustantimes.com/india-news/air-pollution-killed-highest-number-of-under-5-children-in-india-in-2016-who-report/story-wyhYB6E01Qg8VW1MM1L3PO.html>. Last accessed on 30 October 2019.
- 4 WHO Press Release. 6 March 2017. The cost of a polluted environment: 1.7 million child deaths a year, says WHO. Geneva. <https://www.who.int/news-room/detail/06-03-2017-the-cost-of-a-polluted-environment-1-7-million-child-deaths-a-year-says-who>. Last accessed on 30 October 2019.
- 5 WHO Press Release. 6 March 6 2017. The cost of a polluted environment: 1.7 million child deaths a year, says WHO. Geneva. <https://www.who.int/news-room/detail/06-03-2017-the-cost-of-a-polluted-environment-1-7-million-child-deaths-a-year-says-who>. Last accessed on 30 October 2019.
- 6 Water Aid. March 2016. Water: At What Cost? The State of the World's Water 2016. <https://www.wateraidindia.in/sites/g/files/jkxooof336/files/water-at-what-cost-the-state-of-the-worlds-water-2016.pdf>. Last accessed on 30 October 2019.
- 7 Roychowdhury, Anumita. 8 March 2017. Dirty air and water increase cradle deaths in India. <https://www.downtoearth.org.in/news/air/dirty-air-and-water-increase-cradle-deaths-in-india-57305>. Last accessed on 16 July 2019.
- 8 Sayed, Akbar. 25 July 2018. Chemical Concoction: Pesticides in Veggies and Fruits Harm Hyderabad Children. <https://timesofindia.indiatimes.com/city/hyderabad/chemical-concoction-pesticides-in-veggies-and-fruits-harm-hyderabad-children/articleshow/65126763.cms>. Last accessed on 27 October 2019.
- 9 Ministry of Women and Child Development and Poshan Abhiyan. A Call to Action for POSHAN Abhiyaan Elected Representatives. <https://nyks.nic.in/NewInitiatives/PoshanMaah/Letter/Booklet.pdf>. Last accessed on 30 October 2019.
- 10 Press Trust of India. 5 May 2015. 35 Per cent Children in India Suffer From Poor Lung Health: Survey. <https://www.ndtv.com/india-news/35-per-cent-children-in-india-suffer-from-poor-lung-health-survey-760553>. Last accessed on 30 October 2019.
- 11 For example see: Dr. P, Adithya. October 2009. India's Endosulfan Disaster – A review of the Health impacts and status of remediation. <http://www.indiaenvironmentportal.org.in/files/IndiaEndosulfan.pdf>. Last accessed on 30 October 2019; Down to Earth. 16 August 2018. Tracking decades-long endosulfan tragedy in Kerala. <https://www.downtoearth.org.in/coverage/india/tracking-decades-long-endosulfan-tragedy-in-kerala-56788>. Last accessed on 17 July 2019; Down to Earth. 7 June 2015. Children of endosulfan. <https://www.downtoearth.org.in/coverage/children-of-endosulfan-15838>. Last accessed on 17 July 2019.
- 12 Mathew, Roy. 25 October 2009. No end to Endosulfan tragedy. The Hindu. <https://www.thehindu.com/news/cities/Thiruvananthapuram/No-end-to-Endosulfan-tragedy/article16888527.ece>. Last accessed on 30 October 2019.
- 13 Janchetna. 2011. Unpublished report.
- 14 Scaria, Joe, A. 6 June 2012. Industry waste asphyxiated Noyyal river and destroyed livelihoods. <https://economictimes.indiatimes.com/industry/cons-products/garments--textiles/industry-waste-asphyxiated-noyyal-river-and-destroyed-livelihoods/articleshow/13860269.cms?from=mdr>. Last accessed on 30 October 2019.
- 15 Care Trust. 2016. Unpublished Report.
- 16 Care Trust. 2016. Unpublished Report.
- 17 Dhaatri Resource Centre for Women and Children – Samata & HAQ: Centre for Child Rights. 2010. India's Childhood in the "Pits" A Report on the Impacts of Mining on Children in India. <https://www.haqrcr.org/publication/indias-childhood-pits-report-impacts-mining-children-india/>. Last accessed on 30 October 2019.
- 18 Committee on the Rights of the Child. 7 July 2014. Concluding observations on the combined third and fourth periodic reports of India, Para 64 (b). CRC/C/IND/CO/3-4. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fIND%2fCO%2f3-4&Lang=en. Last accessed on 30 October 2019.
- 19 Committee on the Rights of the Child. 7 July 2014. Concluding observations on the combined third and fourth periodic reports of India, Para 64 (c). CRC/C/IND/CO/3-4. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fIND%2fCO%2f3-4&Lang=en. Last accessed on 30 October 2019.
- 20 Terre des hommes Germany – India Programme. Annual Report 2016. <http://www.tdhgermany-ip.org/pdf/AnnualReport2016-India.pdf>. Last accessed on 30 October 2019.
- 21 #HelpDelhiBreathe. <https://helpdelhibreathe.in/>. Last accessed on 30 October 2019.
- 22 Committee on the Rights of the Child. Report of the 2016 Day of General Discussion – Children's Rights and the Environment. <https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2016/DGDoutcomereport-May2017.pdf>. Last accessed on 27 October 2019.
- 23 UNICEF. Child protection from violence, exploitation and abuse. https://www.unicef.org/protection/57929_58013.html. Last accessed on 30 October 2019.

8

PUBLIC FINANCING AND CHILD RIGHTS

BISWAJIT DHAR

Photo: Buddha Jyothi Prasad





Introduction

The past decade has seen increasing emphasis on assessing the initiatives that the governments had taken for fulfilling their commitments under the UN Convention on the Rights of the Child (UNCRC) 1989, especially under Article 4, which read, "...States parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation". Thus, major interest in this crucial implementation issue grew almost two decades after the Convention was adopted. Following the economic recession of 2008 concerns arose on the consequent ability of the governments to finance the social sector at a time when fiscal stimulus was required to pull the economies out of the downturn.

UNICEF undertook several initiatives highlighting the importance of governments making adequate budgetary resources available for programmes for the betterment of children, despite the increasingly stressed fiscal situation. As a part of its Social Policy and Economic Analysis Programme, the organisation decided to provide proposals to government on "budgetary and other finance and governance measures to achieve the national goals for children and the realisation of child rights, including in particular disparity reduction"¹. The organisation popularised the concept of 'public finance for children'² (PF4C), which was to develop into a major programme area of the organisation.

Pioneering work on analysing the government spending on the various components on child rights was done by HAQ: Centre for Child Rights (henceforth 'HAQ study'). The study, 'India's Children and the Union Budget' (released in 2000) analysed the expenditure by the Central Government to assess its spending on programmes for children during the period 1990-91 to 1998-99. The study collated the data on government spending, budgetary provisions, the revised estimates at the end of the year, and, finally, the actual spending. The major findings of the HAQ study were that children's programmes received relatively low priority in Union Budgets and that allocated funds were not utilised fully. The latter finding was typical of government programmes wherein announcements were made for initiating them, but institutional and infrastructural weaknesses were often left unaddressed, leading to the under-utilisation of the funds.

The importance of the HAQ study was recognised by the Department of Women and Child Development (DWCD) when the Department began providing a statement of funds provided in the Union Budget for children's schemes from 2002-03.³ DWCD provided data on spending on the schemes for children but did not report the relative significance of this spending in the overall budgets of Central and State governments.

The situation did not change in the subsequent years, as was observed by the Working Group on Development of Children for the Eleventh Five Year Plan (2007-2012). According to the Working Group, India had not laid adequate emphasis on investments in the social development sector, which was revealed in the Child Budgeting exercise conducted by the Ministry of Women and Child Development (MWCD).⁴ This exercise showed that the level of fund allocation for schemes for children was persistently low. Between 2000-2005, only 2.4 per cent of the Union Budget was spent on children, of which the share of expenditure on elementary education was 1.5 per cent, 0.5 per cent was spent on child development, 0.4 per cent on child health followed by 0.03 per cent on child protection. The Working Group observed that “while positioning children among national concerns, our Five-Year Plans have not accorded them centrality; neither allocated nor utilised an adequate share of available national resources to meet the needs of children or to honour their rights. Unless adequate resources are given to child development and protection in the Eleventh Five Year Plan, children will continue to remain unhealthy, undernourished and vulnerable to all kinds of abuse and exploitations”⁵

Children's programmes received more attention during the 11th Plan with the budget allocation increasing to 3.9 per cent during the entire plan period and to 4.1 per cent in the terminal year of the Plan. However, the Working Group on Child Rights for the 12th Five Year Plan (2012-17) observed in its report that under-utilisation of funds was a major source of concern.⁶ Thus, the problem of underutilisation of budgetary resources allocated for children's programmes in the Union Budgets which the HAQ study had highlighted a decade back, remained as a major weakness of these programmes.

This paper analyses the Union Budgets to better understand the commitment of the government to make budgetary resources available for children's programmes over the past decade. We may mention at the outset that an analysis of the Budget for Children (BfC) would have been more meaningful if we could include detailed data on children's programmes from budget documents of the State Governments since such programmes would cover areas that are either part of the State List (List II) or in the Concurrent List (List III) of the Constitution of India. As the name suggests, the former list includes areas in which State Governments have entire responsibility to implement programmes, while in the latter, programmes are to be implemented jointly with the Central Government.

Children's Budget, From 2007-08 to 2018-19

The initial step taken by the Central Government to provide data on budgetary provisions on children's schemes and programmes in 2002-03 was expanded in 2008-09. The then Finance Minister announced the inclusion a statement on child-related schemes and programmes in the budget. The “Budget Provisions for Schemes for the Welfare of Children” was included as Statement 22 of the Expenditure Budget (changed to Statement 12 from the 2017-18 Union Budget). Initially the Statement provided data on 8 Ministries/Departments, which increased to 18 Ministries and Departments in 2018-19⁷. Besides, from 2008-09, several schemes funded by the Central government in four Union Territories are also included in the statement of the Union Budget.

We would use the above-mentioned data provided in Statement 12 (earlier 22) to analyse the pattern of financing of welfare schemes for children. Details of the expenditure on schemes for children by major Ministries and Departments are provided in the Annex Table. This data and the subsequent

analysis are based on the revised estimates of budgetary provisions provided by the government. Data on the actual outlays on the schemes for children are not available, and hence the revised estimates are the best available approximations of actual spending.

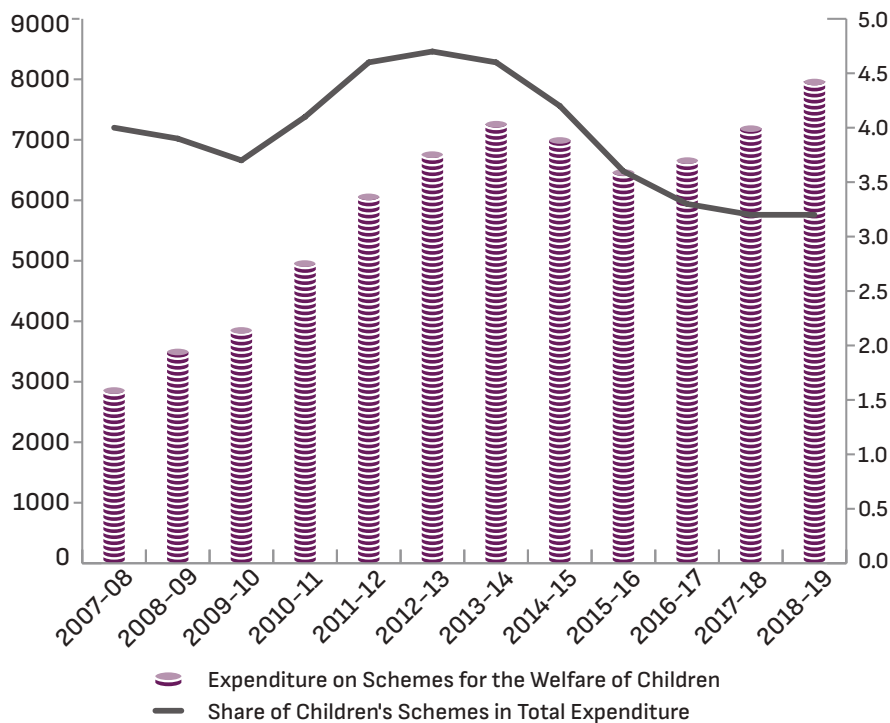
We would like to point out that this database is somewhat less robust than that used in the HAQ study, which used data on actual spending on the schemes to comment on the welfare schemes for children. The HAQ study alluded to the fact that the actual expenditures were often at variance with the revised estimates of the budgetary provisions. Thus, while the HAQ study gave the actual levels of government's commitments to children's programmes, the analysis in this paper can only provide a provisional picture due to data inadequacies.

Between 2007-08 and 2018-19, expenditure on schemes for children's welfare increased from over ₹2800 billion to nearly ₹8000 billion, or by just more than three-fold. There were, however, three distinct trends. Between 2007-08 and 2013-14, total expenditure grew by an average of nearly 17 per cent, although there were wide variations in the annual increases. In the following four years, total expenditure remained below the 2013-14 level, and it was only in 2018-19 that this sequence was broken.

Figure 1 gives the trends in overall spending as well as the share of expenditure on welfare of children in the total expenditure of the Central government.

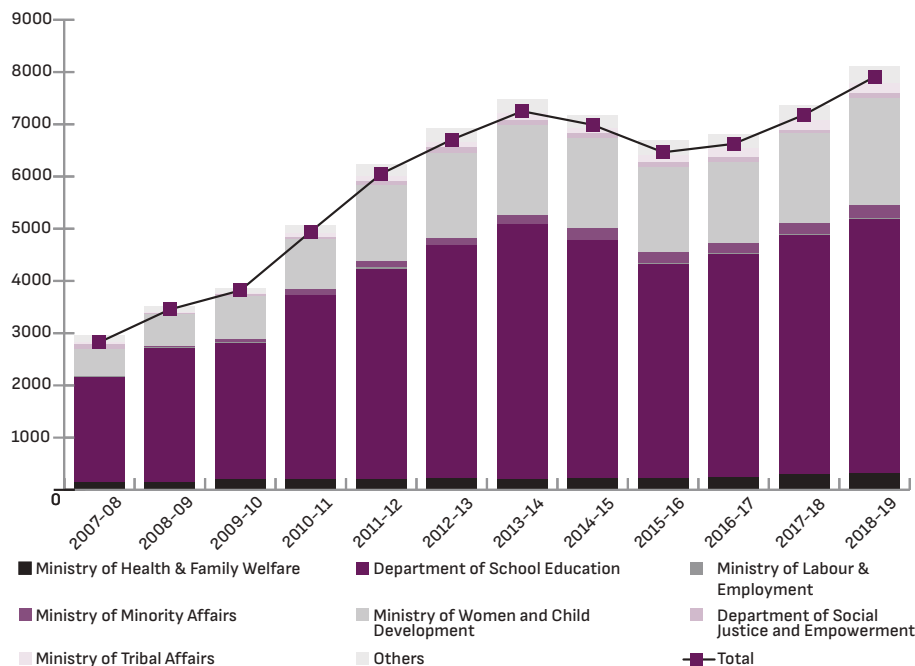
The above chart shows that the share of the schemes for children in the overall budgetary spending had reached almost 5 per cent in 2012-13 but has subsequently dropped sharply to about 3 per cent in 2018-19. These numbers show that in the overall priorities of the Central government, schemes for implementing child rights have been taking the back-seat from 2013-14, and especially during the past five years.

FIGURE 1 SPENDING ON SCHEMES FOR CHILDREN'S WELFARE AS A PROPORTION OF TOTAL BUDGETARY EXPENDITURE



Note: The figures in the table are revised estimates for the respective years

Source: Budget Provisions for Schemes for the Welfare of Children, Statement 22 of Expenditure Budget, volume I, various years.

FIGURE 2 TRENDS IN BUDGETARY EXPENDITURE IN MAJOR AREAS OF SCHEMES FOR CHILDREN

The overall trends in expenditure on children's schemes need to be juxtaposed with the trends in spending on the major areas, namely, education, health and nutrition and social protection. The key ministries that are given the responsibility of managing schemes in each of the areas and their trends in spending is given in the Figure 2.

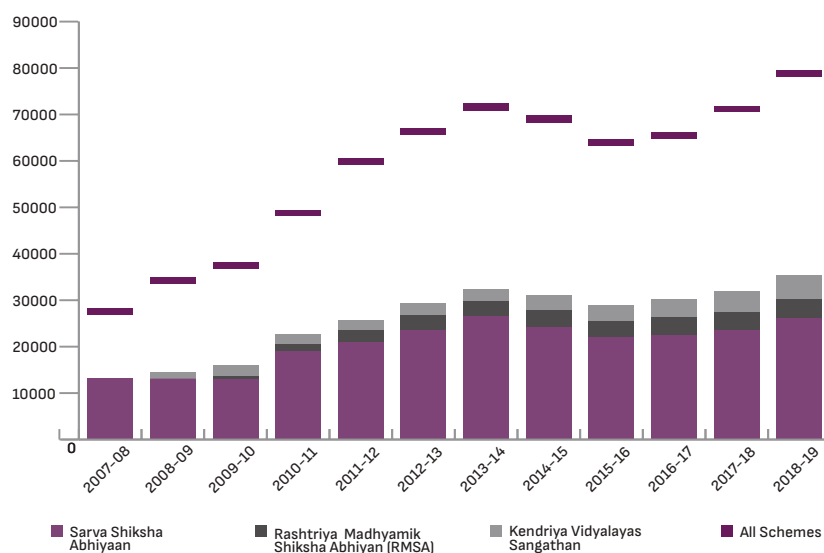
Two ministries/departments namely, Department of School Education and Literacy and Ministry of Women and Child Development, accounted for almost 90 per cent of the total expenditure on schemes for children. The allocations in the department having the largest budget for children-related schemes, the Department of School Education, were barely able to reach the 2013-14 level in 2018-19. The Ministry of Women and Child Development, on the other hand, saw its expenditure increase from about ₹1,700 billion in 2013-14 to over ₹2,190 billion in 2018-19.

Expenditure on some of the more important areas that contribute to the development of children remained well below the requirements for the country. For instance, the schemes under the Ministry of Health and Family Welfare did not increase commensurate with the state of the health of children in India. UNICEF had reported in the State of the World Children that 29 per cent, 39 per cent, and 15 per cent of India's children were underweight, stunting and wasting, in that order⁸. These numbers were the highest among countries that are considered more advanced in the developing world. Further, a recent study has shown that "child and maternal undernutrition is still the single largest risk factor in India, responsible for 15 per cent of the total disease burden in 2016"⁹.

The development model adopted by successive governments has had a common failing; vastly inadequate spending on education. In 1966, the Education Commission headed by Dr. D.S. Kothari had benchmarked the spending on education at 6 per cent of the country's Gross National Product (GNP). The Kothari Commission had further observed that for several decades, the responsibility for spending on education would be that of the State's.¹⁰ Decades of efforts to raise the level of commitment of the State to spend on education resulted in the 86th Amendment of the Constitution that recognised right to education as the fundamental right for children between 6-14 years. The Right of Children to Free and Compulsory Education (RTE) Act was adopted by the Parliament to give effect to the 86th Constitution Amendment. Sarva Shiksha Abhiyan (SSA) was declared by the Government as the main instrument for operationalising the provisions of the RTE Act. and the implementation framework was realigned accordingly.¹¹

Despite making education a fundamental right for every child, the commitment of the government to spending on education has seen little change during the past decades. The Economic Survey of 2017-18 reported that in recent years, government's spending on education has slumped from about 3.1 per cent of the GDP in 2013-14 to 2.6 per cent in 2016-17, a far cry from the Kothari Commission's target of 6 per cent. The reason for the slump in spending can be seen from the trends in spending on the three major schemes on education given in Figure 3.

FIGURE 3 SPENDING ON THE THREE MAJOR SCHEMES ON EDUCATION



Another worrisome aspect has been India's record in dealing with the problem of child labour. According to the 2011 Census, the population of child labour in India was 10.1 million¹², or nearly 4 per cent of the total child population in the age group of 5-14 years. Despite the critical nature of this problem, expenditure on schemes for children's welfare decreased from Rs. 15 billion in 2007-08 to Rs. 12 billion in 2018-19. Two years back, India ratified the both fundamental conventions of the International Labour Organization on eliminating child labour, namely, the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182), but there was no immediate reflection of the twin ratifications on the expenditures on schemes for the welfare of children by the Ministry of Labour and Employment.

An important feature of the expenditure was that Plan funding accounted for 95 per cent or more in almost all years until the financial year 2016-17 when the planning process was dismantled. The significance of Plan funding, for as long as it was there, was that it lent a degree of continuity to the schemes for the benefit of the children, for they were designed for the five-year plan periods. But, after planning was discontinued by the NDA government, the consequent removal of the distinction between plan and non-plan funding, implies that it is difficult to ascertain the extent to which the government is committed to funding children-related schemes over a medium-term. Further, implementation or otherwise of such plan schemes was a way to hold the government to account on the fulfilment of its commitments to child rights but in the present dispensation such possibilities do not exist.

From the above-mentioned it can be concluded that allocations in schemes for children's welfare are disproportionately low. This conclusion becomes even more relevant when we consider the fact that the 0-18 age group, which the UNCRC, as also India's National Policy define as children, accounted for over 39 per cent of the country's population, according to the 2011 Census. A large segment of this population was therefore getting a relatively small share of the allocations from the Central government's budget for implementing schemes from which they can discuss.

The question that needs to be asked here is the following: are the lower expenditures on children-related schemes due to the lack of political will or the inability to garner adequate resources, or perhaps, both? We shall try to address this issue in the following section.

Explaining the Low Level of Spending on Welfare Schemes for Children

We would briefly explore the reasons for the low provisioning of financial resources for children's welfare schemes. While we do recognise that a much larger exercise needs to be conducted to explain the problem of resource-crunch that these schemes have faced; our exercise here is to flag some of the core issues in this regard.

First, the question of political will to spend on schemes for children. A quick perusal of the statements made by the Finance Ministers since the beginning of the 1990s shows that none of them seemed to lack the political will to fund social sector projects. Although most Finance Ministers recognised the lack of financial resources for funding social sector schemes, they were willing to raise resources, mostly through disinvestment of public sector enterprises. It is somewhat surprising that the Finance Ministers should have chosen the latter mode of financing social sector schemes, since selling 'family silver' cannot be a sustainable way of resource mobilisation. The Finance Ministers' commitment to the social sector spending as reflected in their Budget Speeches. It may be noted that the commitment to social sector was shown by every policy party that has formed the government at the Centre.

STATEMENTS BY FINANCE MINISTERS OF THEIR COMMITMENTS TO THE SOCIAL SECTOR IN THEIR BUDGET SPEECHES

Dr. Manmohan Singh, 1991–92: "The room for fiscal manoeuvre gained by restraining expenditure over the past two years must be used to give a strong fillip to development expenditure in 1993–94, especially for programmes of poverty alleviation, rural development and the vital social services such as education and health"

Shri P. Chidambaram, 1997–98: "...the tax to GDP ratio for the Central government, which currently is only around 10.5 per cent, needs to increase to sustain the needs of public investment and social sector expenditure.

Shri Yashwant Sinha, 2000–2001: "Accord the highest priority to human resource development through programmes and policies in education, health and other social services, with special emphasis on the poorest and weakest sections of society".

P. Chidambaram, 2008–2009: Speaking of the target to eliminate revenue deficit: "However, because of the conscious shift in expenditure in favour of health, education and the social sector, we may need one more year to eliminate the revenue deficit. In my view, this is an entirely acceptable deferment".

Pranab Mukherjee, 2010–2011: "The Government will raise about Rs.25,000 crore during the current year (through disinvestment). Through this process, I propose to raise a higher amount during the year 2010–11. The proceeds will be utilised to meet the capital expenditure requirements of social sector schemes for creating new assets".

Sri Arun Jaitley, 2018–2019: "My Government's goal is to assist and provide opportunity to every Indian to realise her full potential capable of achieving her economic and social dreams".

Sources: Budget Speeches of the Finance Ministers

Despite the Finance Ministers expressing their willingness to spend on social sector, there were/are at least four constraining factors facing the governments, which have severely limited their ability to garner adequate resources for social security spending, including on schemes for children. These factors are the following: inadequate efforts of the government to increase tax revenue, and the related fact that an overwhelming majority of the corporates pay either no taxes at all or make nominal contributions by way of corporation tax; the excessively high levels of incentives provided to the corporate sector by way of tax relief, which is often ignored in discussions on resource mobilisation

by government of India; government's commitment to stay within the limits of 'fiscal discipline' prescribed by the Fiscal Responsibility and Budget Management Act (FRBM Act), irrespective of the level of spending that the economy demands to address the development imperatives.

India has one of the lowest tax to GDP ratios in the world. At less than 8 per cent, it is lower than those in all emerging economies. Improvement in India's tax to GDP ratio through better efforts at improving tax compliance and expansion of the tax base would give the government better fiscal space to focus on social security programmes.

Government finances have remained stressed not only because of low tax revenue, but also because successive governments have given significant tax incentives to the large corporates, thus reducing government's revenue accruals. The government began reporting on these incentives (earlier called 'revenue forgone,' a more appropriate term) from 2005-06. The rise in revenue foregone is captured in Table 3.

TABLE 1: TAX FOREGONE DUE TO INCENTIVES TO CORPORATES

Years	Tax foregone / incentives (₹billion)
2005-06	3461.8
2006-07	5007.5
2007-08	6219.9
2008-09	6690.1
2009-10	7288.1
2010-11	5791.2
2011-12	6176.5
2012-13	6800.8
2013-14	5779.3
2014-15	6239.9
2015-16	7685.8
2016-17	8614.5
2017-18	8502.6

Source: Receipt Budget, Various Years

Revenue foregone was, on an average, more than 10 per cent of the government's tax revenue in the previous decade but has moderated to some extent in recent years. In 2017-18, revenue foregone was close to 7 per cent of the GDP. The size of the revenue foregone can be better understood by comparing it with the spending on School Education and Literacy. Revenue foregone for 2017-18, the latest year for which this figure is available, was ₹8502.6 billion, while the spending on School Education and Literacy was ₹4700.6 billion.

Government revenues have also suffered because a large segment of the private sector companies does not pay any taxes. Government helps in understanding this phenomenon by providing data on taxes paid by a sample set of companies. In 2016-17, data from over 6,00,000 companies was used to provide this data. The findings are quite revealing (Table 4). Nearly 46 per cent of the companies pay no tax, since they report no profit or report losses. Another 48 per cent of the companies report profits of less than ₹10 billion.

Which means only 0.3 per cent of the companies reported profits of more than ₹1000 billion, and would, therefore, have made meaningful contributions to the exchequer.

The question that needs to be asked here is the following: are the lower expenditures on children-related schemes due to the lack of political will or the inability to garner adequate resources, or perhaps, both?

TABLE 2: PROFILE OF SAMPLE COMPANIES ACROSS RANGE OF PROFITS BEFORE TAXES (FINANCIAL YEAR 2016-17) (SAMPLE SIZE - 6,08,836)

Profit Before Taxes	2005-06		2010-11		2013-14		2016-17	
	Number of Companies	Share in Total (%)	Number of Companies	Share in Total (%)	Number of Companies	Share in Total (%)	Number of Companies	Share in Total (%)
Less than Zero	101,456	33.6	161,596	35.2	228,447	40.4	260,194	42.7
Zero	20,020	6.6	31,327	6.8	25,624	4.5	17,912	2.9
₹0-1 Crore	164,352	54.5	237,580	51.7	278,515	49.3	290,250	47.7
₹100-500 Crore	346	0.1	763	0.2	808	0.1	1,097	0.2
More than ₹500 Crore	113	0.0	239	0.1	263	0.0	335	0.1
All Companies	301,736	100.0	459,270	100.0	564,787	100.0	608,836	100.0

Source: Receipt Budget, Various Years

Our final comment on Government finances relates to the self-imposed compulsion of setting a ceiling of 3 per cent on the ratio of fiscal deficit to GDP. Formally recommended by the FRBM Act, this limitation on government spending restricts the ability of the government spending on social sector projects, if fiscal deficit to GDP crosses the 3 per cent of the GDP. Economic logic defies this arbitrarily imposed limit, especially when this limit needs to be exceeded because key constituencies need urgent support from the government.

Conclusions

This paper explored the pattern of spending by the Central Government on schemes for the welfare of children. This expenditure is taken as a proxy for the commitment that the government has made to the fulfilment of child rights as a party to the 1989 Convention on Rights of the Child.

We pointed out that during the past three decades, Finance Ministers of every government in power acknowledged the importance of social sector spending, and yet their support for the schemes that would have benefited 39 per cent of the country's population (according to the 2011 Census) remained at desperately low levels. After three decades of the adoption of the Convention on Child Rights, the country having the largest number of children continues to show less than the desired levels of commitments to assure the rights that our children deserve.

We based our analysis on the Expenditure Budget Statement, 'Budget Provisions for Schemes for the Welfare of Children', which provides information on the schemes financed by the Central Government for children's welfare. Our analysis showed that Central government's overall financial commitments towards welfare of children has declined in relative terms since the end of the previous decade. Although there was a phase in the early years of the current decade when the spending on the schemes for children had increased to nearly 5 per cent from 4 per cent in 2007-08, in 2018-19, this figure had declined to 3.2 per cent.

Our analysis showed that the levels of spending on schemes for children shown in the Expenditure Budget Statements may, in fact, overstate the commitments of successive governments to child rights. This is because schemes of several ministries are also included in the Statements that may benefit children at best in an indirect manner.

Given these observations, there are at least two initiatives that need to be taken for benchmarking government spending for the welfare of children. The first is a targeted annual level of spending, as a share of GDP, on schemes for children that the government must commit. Since India has a young population and therefore investment in children would bring significant demographic dividend, a

10 per cent share of GDP could be made mandatory. This figure relies on the Kothari Commission benchmarking on spending on education, and which was 6 per cent of the GDP. Again, as the Kothari Commission had remarked, a major share of the spending on children should be committed by the government, both at the Centre and in the States. Children must be considered as public goods since investing in them would bring benefits to the society at large.

A second initiative that needs to be taken is in terms of the methods of identifying schemes that bring tangible benefits for children. As stated above, many schemes listed in the Expenditure Budget Statements do not seem to benefit the children directly. A possible way forward in this regard would be to conduct a transparent auditing of the schemes for the welfare of children that are included in the Statements.

A final point that this paper makes is on the resource question. Government spending in India has forever been a victim of resource crunch, and this includes social sector spending. Ironically, most Finance Ministers, at least since the early 1990s, had expressed their commitment to spend on government spending on social sectors, even if such spending involved selling the public sector undertakings, many of which were designated by the governments as 'Navaratnas'. In other words, the governments had declared that would not hesitate to sell these jewels in order to finance social sector spending.

We undertook a small exercise to show that successive governments have neglected the important area of resource mobilisation through increasing tax revenues. India has one of the lowest tax to GDP ratios among major economies, and it is our view that the government needs to explore the options to increase its revenue accruals. With larger revenues at the government's disposal, India can show much greater commitment towards fulfilling child rights than it has done in the past three decades.

Annexure

Budget Provisions for Schemes for the Welfare of Children

(in ₹ billion)

Ministries/Departments	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
Ministry of Health & Family Welfare	Plan	137.3	140.8	189.8	193.6	196.5	198.3	216.7	220.3
	Non-Plan	2	3	3.7	5.5	5.1	5.8	6.5	6.8
	Total	139.3	143.8	193.5	199.1	201.7	204.1	223.2	227
Department of School Education	Plan	2016.1	2428.3	2363.6	3306	3790.1	4185.7	4240.7	3800.8
	Non-Plan	0.6	144	250.2	217.7	235.5	292.4	309.8	296.8
	Total	2016.7	2572.2	2613.8	3523.7	4025.6	4448.3	4879.7	4097.7
Ministry of Minority Affairs	Plan	6.3	28.4	57.7	99	126.6	115.1	170.7	211.3
	Non-Plan	0	0	0	0	0	0	0	0
	Total	6.3	28.4	57.7	99	126.6	115.1	170.7	211.3
Ministry of Women and Child Development	Plan	508.2	594.3	835.7	958.4	1452.4	1636.4	1730.5	1624.8
	Non-Plan	2.3	2	1.6	1.6	1.8	1.8	2	2.1
	Total	510.5	596.3	837.3	960	1454.2	1638.2	1732.5	1626.9
Department of Social Justice and Empowerment	Plan	105.1	21.8	27.1	42.4	65.2	109.8	85.3	95.7
	Non-Plan	0	8.1	9.2	13.2	19	24.9	21.8	25.6
	Total	105.1	29.9	36.2	55.6	84.2	134.7	107.1	121.3
Others	Plan	48.1	74	65.5	100.3	155.2	133.1	143.8	170.5
	Non-Plan	0	10	14.2	8.5	5	3.5	9.5	8.8
	Total	48.1	84	79.8	108.8	160.2	135.9	153.8	179.3
Total	Plan	2821	3287.5	3539.4	4699.7	5786	6409.9	6639.3	6123.4
	Non-Plan	4.8	167.1	278.9	246.5	266.4	296.1	328.5	340.1
	Total	2825.9	3454.6	3818.3	4946.1	6052.3	6706.1	7249.6	6463.5

	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
Ministry of Health & Family Welfare	139.3	143.8	193.5	199.1	204.6	228.8	204.1	223.2	227.0	233.1	296.6	308.7
Department of School Education	2016.7	2572.2	2613.8	3523.7	4025.6	4448.3	4879.7	4550.4	4097.7	4277.9	4583.9	4881.1
Ministry of Labour & Employment	15.3	14.7	10.0	10.9	30.9	13.2	11.1	11.1	10.0	10.8	10.7	12.0
Ministry of Minority Affairs	6.3	28.4	57.7	99.0	126.6	115.1	170.7	222.3	211.3	203.0	211.7	239.3
Ministry of Women and Child Development	510.5	596.3	837.3	960.0	1454.2	1638.2	1706.6	1732.5	1626.9	1543.0	1721.5	2055.5
Department of Social Justice and Empowerment	105.1	21.8	27.5	42.4	62.4	116.2	109.7	85.3	95.7	98.6	65.8	93.7
Ministry of Tribal Affairs	23.8	32.8	35.2	74.6	106.7	101.4	120.1	107.0	133.6	178.0	187.4	207.3
Others	137.9	97.5	92.9	151.4	211.1	259.9	274.5	246.2	287.2	258.5	291.5	318.7
Total	2825.9	3454.6	3818.3	4946.1	6052.3	6706.1	7249.6	6988.8	6463.5	6624.9	7181.8	7909.0

Note: Data are Revised Estimates for the respective years

Endnotes

- 1 UNICEF Annual Report for China, accessed from: https://www.unicef.org/about/annualreport/files/China_COAR_2010.pdf. Last accessed on 17 October 2019
- 2 UNICEF Annual Report for China, accessed from: https://www.unicef.org/about/annualreport/files/China_COAR_2010.pdf. Last accessed on 17 October 2019
- 3 Department of Women and Child Development. 2002-03. Annual Report 2002-03. page 145.
- 4 Planning Commission. (n.d.) Working Group on Development of Children for the Eleventh Five Year Plan (2007-2012), Volume One; 4; http://planningcommission.gov.in/aboutus/committee/wrkgrp11/wg11_rpchild.pdf
- 5 Planning Commission. (n.d.) Working Group on Development of Children for the Eleventh Five Year Plan (2007-2012), Volume One; 6; http://planningcommission.gov.in/aboutus/committee/wrkgrp11/wg11_rpchild.pdf
- 6 Planning Commission. (n.d.) Report of the Working Group on Child Rights for the 12th Five Year Plan (2012-2017); 76; http://planningcommission.gov.in/aboutus/committee/wrkgrp12/wcd/wgrep_child.pdf
- 7 It may be mentioned that a few the newly added Ministries and their schemes do not seem to be devoted to children's welfare. For instance, since 2016-17, the Ministry of Urban Development's scheme, Atal Mission for Rejuvenation and Urban Transformation, is included in Statement 12. Similar is the case of the three schemes introduced by the Department of Atomic Energy in the same year.
- 8 UNICEF. 2016. The State of the World's Children 2016. Table 2.
- 9 India State-Level Disease Burden Initiative Collaborators. 2017. Nations within a nation: variations in epidemiological transition across the states of India, 1990-2016 in the Global Burden of Disease Study. *Lancet*. 2017; p. 2449. <https://www.thelancet.com/action/showPdf?pii=S0140-6736%2817%2932804-0>.
- 10 Government of India. 1966. Report of the Education Commission (1964-66). Chapter 19.
- 11 Govinda R. and A. Mathew. 2018. Universalisation of Elementary Education in India: Story of Missed Targets and Unkept Promises. Working Paper CSD 1/2018. Council for Social Development. <http://csdindia.org/wp-content/uploads/2018/06/Universalisation-of-Elementary-Education-in-India-Prof-Govinda.pdf>.
- 12 According to the ILO, these children were working, either as 'main worker' or as 'marginal worker'. ILO. 2017. Fact Sheet: Child Labour in India. 8 June. https://www.ilo.org/newdelhi/whatwedo/publications/WCMS_557089/lang--en/index.htm.

PART II

9

VISIBILISING THE YOUNG CHILD IN INDIA AS A RIGHTS' HOLDER

SAMREEN MUSHTAQ
AMRITA JAIN
SUMITRA MISHRA



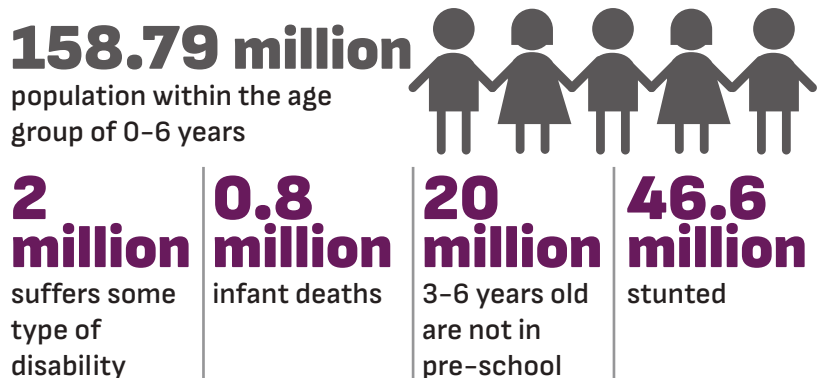
Introduction

Over the last few decades, a lot of interest has been generated in early childhood development (ECD). The impetus to such interventions comes from research findings that the brain grows the fastest and is the most responsive to stimulus during the early years. However, fragmentation of the various needs of a child during the early years, often prioritising one over the other, is a stumbling block towards ensuring the overall physical, emotional, and social well-being of children and the larger progress of society. In addition, clubbing the needs of the youngest children with the larger category of children often tends to leave their specific issues unaddressed.

Despite huge demographic potential, the sector has been persistently neglected, evident from the high percentage of young children in India who don't survive past the critical years, or those who are undernourished, stunted or wasted.

Despite significant interventions in India, like the flagship Integrated Child Development Services scheme (ICDS), lack of proper nourishment and care results in the death of 1.5 million children every year before reaching the age of six. The first 1000 days between a woman's pregnancy and a child's second birthday are critical to ensure survival and ability to develop to the full potential. However, the pre-existing socio-cultural burden on women becomes a major cause leading to neglect at this stage. This necessitates the need to look at rights of women and children as overlapping issues.

IN INDIA



Introducing the Young Child

The term young child refers to a child between the ages of 0-6 years. Early Childhood Development (ECD) encompasses this age group and up to eight years in continuum with respect to the physical, social, psychological, cognitive well-being and development.

Over the last few decades, a growing body of research has dealt with untangling the early years of life from the overall focus on childhood (up to 18 years in most policy and legal frameworks) to address the specific needs of this age group. This interest comes from neuro-scientific research findings that prove the criticality of the early years. This is the period when the most rapid brain development occurs and the foundation is laid for a healthy life span.¹ Within this youngest segment of the population which is generally at a disadvantage, the Under-3s face further exclusion in policy and programmatic interventions. This is also the period when children are more vulnerable to neglect and abuse, necessitating the need for care and protection. However, one finds this age group marginalised and ECD's importance diluted given the subsequent hierarchy intrinsic to the social norms of age, status, and political participation.

With societal diversity on the rise, demographic changes, and women's participation in the labour market, the demand for childcare has grown as well as the dynamics of formal and informal childcare have shifted. In recognition of the importance of ECD, Sustainable Development Goals have included it in Goal 4 under Target 4.2: "By 2030, ensure that all girls and boys have access to quality early childhood development, care and pre-primary education so that they are ready for primary education."² The G20 countries, in what was seen as a landmark moment for early childhood development, committed to it at the Argentina annual summit in late 2018. It not only addressed the issue as a 'high priority' but also highlighted its potential to end the cycle of poverty and inequalities.

SDG Goal 4, Target 4.2
"By 2030, ensure that all girls and boys have access to quality early childhood development, care and pre-primary education so that they are ready for primary education."

The first 1000 days of life, between the times when a woman becomes pregnant to the child's second birthday, is a window of opportunity to establish optimum development through the lifespan. Investment on nutrition and care during this period influences a child's survival. It is also telling of the child's ability to grow, and develop to his/her full potential. Micheal Vandenberg and others analyse, the varied yet interlinked benefits that investment in ECD ensures, both for the children, and overall society as well.³ High-quality ECD intervention is linked to 'higher earnings, greater educational attainment, improved social integration and better health, among other advantages'. In addition it encourages greater labour force participation, especially of women, low crime rates and better social cohesion. These interventions have also been noted to have 'spill-over economic benefits'.⁴ They help break the vicious cycle of poverty and gender inequality, increase workforce size, and result in long-term human development.

The criticality of the early years for ensuring better individual and collective life has, therefore, necessitated a shift from a need-based approach for understanding childcare to a rights-based approach. Such an understanding places the rights and entitlements of the child at the centre of policy making. As an individual possessing rights, the young child must be seen as a rights-holding citizen, an active participant in his/her development rather than a passive recipient. In addition, the rights of the mother and the child must be seen as mutually reinforcing. The compartmentalisation of the two has often resulted in seeing them in isolation. A woman's health, education, age at marriage, access to pre-natal and post-natal medical care, fulfilment of nutritional needs has a strong impact on the overall well-being of the child, and his/her very ability to survive through the critical years. It is an important part of ECD interventions since it becomes necessary to address the overall context within which a child grows, including the family.

NATIONAL PLAN OF ACTION FOR CHILDREN 2016

Sub-objective 1.4: Ensuring availability of essential services, supports and provisions for nutritive attainment in a life-cycle approach, including Maternal, Infant and Young Child Feeding (MIYCF) practices

Key Strategies

Priority Action

- Ensure availability of adequate and affordable nutritious food
 - Promote Nutrition Gardens of fruits and vegetables at household level and all government/ aided Schools, AWCs and CCIs and promote consumption of the produce by children
 - Promote use of affordable, appropriate, and nutritious recipes based on local food resources available from the local ecosystem and dietary practices
- Implement Maternal, Infant and Young Child Feeding (MIYCF) practices (including 1000- Days Approach)

Mapping the Indian Context – What the Data Says

As the second most populous country of the world, India has 13.12 per cent (158.79 million) population within the age group of 0-6 years.⁵

However, despite huge demographic potential, the sector has been persistently neglected. This is evident from the high percentage of young children in India who don't survive past the critical years, or those who are undernourished, stunted or wasted.

As India continues to be one of the world's fastest growing major economies of the world, it still lags behind many of its Asian and global peers when it comes to various indicators of human development, with comparatively high levels of malnutrition, infant and child mortality.

The Human Development Index put India's rank at 130 in 2017, China 86, Indonesia 116, Maldives 101, Philippines 113, Thailand 83, Bangladesh 136, Pakistan 150.⁶ The IMR at 36.2 in 2015 is higher than Bangladesh (29.7), China (9.2), Indonesia (22.9), Philippines (22.1). The U5MR is also higher than India's peer countries.

Indicators of Maternal and Child Health

While Infant Mortality Rate at the all-India level has witnessed a substantial decrease from 46 in 2011 to 34 in 2016, varying between 10 in Kerala to 47 in Madhya Pradesh (Government of India 2018), it is still quite high.⁷ According to the UN Inter Agency Group for Child Mortality Estimation (2017), about 8,02,000 infant deaths were reported in India in 2017 which was the lowest figure in five years. However, the infant death numbers were still the highest in the world, followed by China at 3,30,000.⁸ The Global Nutrition Report 2018 noted that India tops the list of stunted children in the world (46.6 million), accounting for one third of the total stunted children in the world, followed by Nigeria (13.9 million) and Pakistan (10.7 million).⁹ As per NFHS 4 (2015-16), 38.4 per cent children under the age of 5 are stunted in India, while 21 per cent are wasted. 35.8 percent are underweight. Infant Mortality Rate is 41 per cent while the Under Five Mortality Rate is 50 per cent.

Linked closely to child health is maternal health and access to nutrition. The health of the mother, her age at marriage, her access to nutrition during pregnancy, to planned pregnancy, or skilled health professionals during pregnancy and at child birth, is linked to the birth of pre-term babies, and the prevalence of birth defects. The NFHS-4 data shows that 26.8 per cent women in India, between the age of 20-24 years at the time of the survey, were married before the age of 18 and 50.4 per cent pregnant women in the age group of 15-49 are anaemic; only 21 per cent mothers had full antenatal

care. If the basic minimum nutritional intake of iron and calcium is not maintained for the mother, it increases the chances of low-birth weight babies and may result in inter-generational stunting. Most new born deaths in India have been known to be caused by low-birth weight and preterm delivery.¹⁰

The variations across states and within states for all indicators are quite high for a country as vast and diverse as India. Jean Drèze and Ritika Khera, development economists, have noted how the regional patterns of child deprivation vary in India, with the northern heartland being the ‘big problem region’.¹¹ As per NFHS 4 (2015-16), sex ratio (0-6 years) in India is 916 with Haryana having the lowest number of females per 1000 males at 838 while Kerala registers the highest at 1020. Most states in southern and western India perform better on child health indicators compared to the northern and the north eastern belt. Achyuta Adhvaryu and others highlight these disparities as they note,

“Infant mortality rates in Uttar Pradesh and Madhya Pradesh are more than four times those of Kerala, while the gap between the most and least vaccinated states is more than 40 percentage points. Even within states, there exist stark disparities. Infant mortality rates of children born in rural areas are more than 1.5 times those of their urban counterparts. Similarly, the difference between the most and least vaccinated districts within states is almost always greater than 30 percentage points.”¹²

The highly unequal rate of improvement and progress, across and within states, brings the question of disadvantage and unequal access to the fore. This necessitates for effective interventions to reach the most marginalised and invisibilised, those left at the fringes of the development story.

Key Issues Facing the Young Child

A range of interlinked issues affect the lives of young children in India. These range from health and nutrition, early learning, to multiple marginalities emanating from poverty, gendered, caste and class identities, location, access to services, lack of care, neglect, abuse and violence. Access to nutritious food for both the mother and the child, feeding practices for the infant and young child, immunisation from various diseases, clean drinking water, sanitation and hygiene, are all essential to support good healthcare interventions. Despite significant interventions in India, like the flagship Integrated Child Development Services scheme, the lack of proper nourishment and care results in the death of 1.5 million children every year before reaching the age of six.ⁱ

Poverty is one of the key factors that cuts across states and regions when it comes to performance along the indicators of child survival and development. Poverty is interconnected with and feeds into other factors. The vulnerability of the young child is increased multi-fold by discrimination and differential access owing to gender, caste, class, location, thus becoming a vicious circle of deprivation which impinges upon an individual’s right to reach his/her full potential, and hampers the per capita productivity. One needs to look at how schemes like ICDS and the Public Distribution System cater to the poor and marginalised, those on the fringes of the nation-state project. Mander and Kumaran (2006), Thorat and Sadana (2009) have noted in their studies that the exclusionary bias in ICDS was perpetuated by locational factors.¹³ Even after decades, ICDS remains under scrutiny for its inadequate implementation as it focuses more on the 3-6 age group and doesn’t support enough the even more crucial period of birth to 3 years.

The Plan International 2017 highlights, gender discrimination combined with son preference means that “young girls receive less nutrition, opportunities to play and access early learning than young boys”.¹⁴ Likewise, empirical evidence has shown that children belonging to Scheduled Castes face exclusion and discrimination in terms of access to basic services.¹⁵ Reports have noted the discriminatory treatment meted out to SC anganwadi workers by upper caste people in the respective

i The world’s largest community-based programme, ICDS was launched by the Government of India in 1975 to cater to the needs of children under six years of age, pregnant women and lactating mothers, and adolescent girls keeping the lifecycle perspectives in mind. The scheme offers a package of services including supplementary nutrition, pre-school non-formal education, immunisation, nutrition and health education, health check-ups, and referral services.

areas, and caste-based discrimination against Dalit children in mid-day meals.¹⁶ Since the household's food security impacts the child's dietary intake, the former's position in the social and caste hierarchy thus determines a child's access to nutrition and early education. When this social exclusion combines with gendered identity, it results in the child being doubly discriminated.

While the maternal mortality rate in India reduced from 212 deaths per 1,00,000 live births in 2007 to 167 deaths in 2013, India still contributed a high 20 per cent of approximately 800 women globally who die every day owing to preventable causes during pregnancy or child birth.¹⁷ Women in poor households have two and a half times higher mortality rates, with adolescent mothers and those living in far flung areas more vulnerable to dying during childbirth. Further, gender bias results in sex selection, seen in terms of a skewed sex ratio, and differential care and access to medical services depending on whether it is a boy or a girl.

The Intersections of Neglect

Many of the developmental changes that occur in the early years of life, especially in the first 1000 days, have little to no possibility of occurring later. This is the period of tremendous opportunity and great vulnerability, needing adequate nutrition, care and stimulation. However, children under-3 have often been subjected to neglect for various reasons including excessive burden on the mother, inadequate breastfeeding, lack of an adult caregiver especially in poor households where the parents go out to work. This is especially true of the unorganised sector which provides no mechanism for childcare. The NFHS-4 report shows that while 54.9 per cent children under 6 months are exclusively breastfed, a meagre 8.7 per cent of breastfeeding children between the age of 6-23 months receive an adequate diet. Infants and young children are more susceptible to infections and diseases like malaria, diarrhoea, measles. The situation is further worsened by poor hygiene, unsafe drinking water and lack of proper sanitation. While the country has made great progress in reducing the occurrence of these diseases and related deaths, full immunisation for children between 12-23 months stands at 62 per cent with considerable variations across states and regions. There are also issues with regard to continued care, medical follow-ups following infections and diseases during early years, which causes a greater danger of developing a disability.

The situation is also exacerbated in terms of rural-urban difference in healthcare development and access, socio-economic differences, scheduled caste and scheduled tribe groups that are disadvantaged. In addition, it is also challenging for children who are orphans, or from poor households with parents working in the unorganised sector, children outside of the heteronormative gendered identity, children living on the streets, in slums, in conflict areas, in jails with their mothers who are undergoing a prison term. In these cases, multiple marginalities and forms of identity intersect to subject young children to increased vulnerabilities and lack of care and neglect.

With regard to early childhood education, children from the higher wealth quintiles have access to Early Childhood Care and Education (ECCE) facilities, starting even at the age of two, especially because of the mushrooming of private ECCE centres across urban spaces. But children from households of the lower socio-economic strata, whose need for such care and education in the public sector is multiplied because of their impoverished families, find themselves with hardly any access to such early development programmes. This often results in a situation where younger children are then seen to be crowding into primary schools, leading to higher dropout and repetition rates later.¹⁸

In addition, what severely affects childcare is also the burden on women especially those from poor households working in the unorganised sector, with severely lacking maternity entitlements. Despite comprising a significant portion of the labour market, they find themselves bogged down by unequal access to the market as well as lower wages. They are expected to take on with full responsibility the role of a worker, a mother, as well as perform all household chores. This triple burden on women simultaneously works with childcare being relegated as a mother's responsibility alone. These gendered notions of childcare often emanate from the same patriarchal mind-set that relegates women to the status of secondary citizens in the society.

The aspect of care is central to early childhood development. In large family settings, care often becomes a collective responsibility. However, with modern family structure, demographic changes especially of increasing migration and urbanisation, and socio-economic constraints, the need for nurturing care becomes a primary concern with regard to the young child. In poor households, the absence of working parents leaves the responsibility of care to be often shouldered by an elder sibling. As a result, neither the young child nor the elder sibling are properly cared for. While one needs an adult caregiver, the other is kept away from school. Likewise for orphans and street children. Even in cases where adequate nutrition is available, the need for warm, responsive care is often subsumed as if the child can grow up on its own only with sufficient nutrition availability. Perhaps one of the biggest conceptual flaws in the ICDS, even as it promoted the concept of supplementary nutrition, immunisation, take home rations, pre schooling, was the absence of a plan for 'care' in the concept to ensure the nurturing, safety, and protection of the young child. "There is food; who feeds it to the child and how?" was a question left unaddressed. Over the years, the role of the ICDS worker, ASHA, AWW, has remained short of being seen as professional childcare work owing to the lack of importance the state structures have assigned to it as well as the honorarium for the work, which makes it visible as work that isn't dignified.

What Must be Done?

The range of challenges faced by young children in their diverse situations must be mitigated through the provision of a justiciable and comprehensive right to early childhood, guaranteeing a set of integrated rights to the youngest citizens of India.

- The sub-stages of birth to six months, six months to 3 years, and 3-6 years, and the continuum of early childhood from 6-8 years, must be recognised in any such legislation. This will ensure that specific needs at specific stages are covered and for continuity between the various stages at this foundational age. This is important so that one stage builds on the gains from the one preceding it.
- A point of convergence between the mother and the child, to recognise the interconnected needs and rights, from maternity entitlements, right to nutrition and care, emerging from such a relation must be considered.
- A proper institutional mechanism for ECCE must be backed by adequate resources – human, financial and infrastructure. The curriculum and regulatory norms must ensure quality and equity that put the best interests of the child at the forefront.
- All of the different rights to be ensured by different departments through various programmes and initiatives, in addition to monitoring, grievance redressal and delivery mechanisms, should find a convergence. The primary goal must be to prioritise the young child, his/her needs, and holistic development.

The Right to Education in India, recognised as a fundamental right caters only to the 6-14 age group. It must be extended to children in the under-6 age group as well. Article 21A of the Constitution should be amended to provide free and compulsory education to all children. Since the state is the primary duty bearer, hence it needs to play the most central role in the provisioning for ECCE. The importance of ECD necessitates an increased budgetary allocation for early childhood services and programmes from the central and state governments, while the private sector can complement the services rather than being a total substitute of the state's role, such that the best interests of the child are at the centre of all initiatives.

The legal and other statutory provisions like The Factories Act, 1954, Mines Act, 1952, Tea Plantations Act, 1951, National Rural Employment Guarantee Act (NREGA), 2005, etc mandated the setting up of crèches. However the requirement was to be acted upon on the basis of a certain minimum number of women working at the site. This provisioning not only speaks of the existing gendered notions where childcare is only linked to a woman, but also tends to disadvantage women from accessing

work opportunities as employers may not want to take up the responsibility of setting up crèches. The need therefore is to reimagine childcare as a mandate for all children requiring care, whether at the worksite or in neighbourhoods, to support working parents. Equally important, crèches can play a positive role in being enablers of women participation in the workforce. In addition, the state must enable families for better childcare by providing adequate services where they lack the capacity, through household level guidance that can help them take care of their infants and young children better.

Moreover, there is an urgent need for a change of mind set at several levels, such as:

- Understanding that childcare is not the work of a mother alone. The existing gendered biases and notions need to be challenged through extensive awareness raising. The mother's responsibility needs to be seen as the parent's responsibility, with fathers being a part of childcare practices at home. Women's education can go a long way in ensuring that they are aware of their rights and challenging patriarchal notions.
- It is not enough for the state to provide people the access to nutrition and healthcare services. It must enable care within the home and outside of it in institutional settings through proper training, professionalisation and investment at multiple levels.
- A young child's interconnected needs of nutrition, cognitive development, maternal health, safe delivery mechanisms, skilled professionals for birth, antenatal and postnatal care, immunisation coverage, maternity entitlements, safety, care, and protection are holistically addressed. A fragmentation of the various needs of a child during the early years, often prioritising one over the other, is a stumbling block towards ensuring the overall physical, emotional, and social well-being of children and the larger progress of the society.

The neglect during early years, which is the foundational period of life, results in affecting the individual potential and subsequently has a low demographic return. It negatively impacts the overall development of the society and the economic well-being of the nation.

Proper, holistic interventions during this stage are necessitated by the rights an individual enjoys by virtue of his/her being a human being, and can result in rich demographic dividends. It is the primary duty of the state to ensure that the rights of the individuals are not compromised. As a proven pathway to progress, it is time for investing holistically in early childhood for a promise of the future.

**If you change
the beginning
of the story,
you change the
whole story**

There is a continued need to visibilise the young child in India as a citizen in his/her own right, highlight key issues, necessitating the need for better interventions and investments at the grassroots level for proper nutrition, nourishment, stimulation, and care. Investing in early childhood ensures individuals reach their full potential, has good demographic returns, and can contribute to societal transformation. Therefore, there is a need to adopt a holistic approach to address these issues and prioritise Early Childhood Development.

Endnotes

- 1 World Health Organization. 2016. Early child development. <https://www.who.int/topics/early-child-development/en/>. Last accessed 25 October 2019.
- 2 <https://www.un.org/sustainabledevelopment/sustainable-development-goals/> Last accessed 12 November 2019.
- 3 Vandenbroeck, M. et al. 2018. "Benefits of Early Childhood Education and Care and the conditions for obtaining them". European Expert Network on Economics of Education, 32. page 1-86.
- 4 Karoly, L. et al. 2005. Early Childhood Interventions: Proven Results, Future Promise, Santa Monica, CA: RAND Corporation.
- 5 Census of India. 2011
- 6 <https://www.in.undp.org/content/india/en/home/sustainable-development/successstories/india-ranks-130-on-2018-human-development-index.html>
- 7 Ministry of Statistics and Programme Implementation. Government of India. 2018. Children in India 2018: A Statistical Appraisal. http://www.mospi.gov.in/sites/default/files/publication_reports/Children%20in%20India%202018%20-%20A%20Statistical%20Appraisal_26oct18.pdf. Last accessed on 30 October.
- 8 NDTV. 18 September 2018. Infant Deaths in India Lowest In 5 Years, Still Highest In The World: UN. <https://www.ndtv.com/india-news/infant-deaths-in-india-lowest-in-5-years-still-highest-in-the-world-un-1918355>. Last accessed on 28 October 2019.
- 9 World Health Organisation. 2018 Global Nutrition Report. <https://www.who.int/nutrition/globalnutritionreport/en/>. Last accessed on 27 October 2019.
- 10 Saha, D. 1 November 2016. Low birth weight, preterm delivery cause most newborn deaths in India. Business Standard. https://www.business-standard.com/article/economy-policy/low-birth-weight-preterm-delivery-cause-most-newborn-deaths-in-india-116110100585_1.html Last accessed on 27 October 2019.
- 11 Drèze, J. and R. Khera .2012. Regional Patterns of Human and Child Deprivation in India. xlvii (39) page 42-49.
- 12 Adhvaryu, A. et al. 2016. Early Childhood Development in India: Assessment and Policy Recommendations. India Policy Forum, page 1-30.
- 13 V.K et al. 2014. Evaluating the Social Orientation of the Integrated Child Development Services Programme. Economic and Political Weekly, xlix (12) page 52-62.
- 14 <https://plan-international.org/publication/2017-06-08-gender-inequality-and-early-childhood-development>
- 15 Sadana. N. 2009. Dalit Children in Rural India: Issues Related to Exclusion and Deprivation. Indian Institute of Dalit Studies. Working Paper Series, III (5) page 1-40.
- 16 Jan Sahas Social Development Society. 2009. Exclusion and Inclusion of Dalit Community in Education and Health: A Study, March 2009, Madhya Pradesh.
- 17 UNICEF-India. <http://unicef.in/Whatwedo/1/Maternal-Health>.
- 18 Kaul, V. and D. Sankar.2009. Early Childhood Care and Education in India. National University of Educational Planning and Administration (NEUPA). page 1-44



Photo: Daniela Hartmann

10

CHILDREN WITH DISABILITIES

An Excluded Agenda

ANITA GHAI

Photo: Prasanth Chandran





Introduction

“Childhood is the most intensely governed sector of personal existence. Words such as ‘child’, ‘children’, ‘citizen’ and ‘citizenship’ have become a part of child rights vocabulary. The ways in which children negotiate, share and create with peers as well as adults, reflect their socialisation process”.¹ However, children with disabilities are invisible in discourses on children notwithstanding the inclusion of disability in national and international human rights instruments, comprising of the UN Convention on the Rights of the Child (UNCRC) as well as people with disabilities², there is very little hard evidence to show that disabled children’s lives are discussed. Life is tough for a child with disability, and negotiating childhood and adolescence is anyways a very complex task.

“The culture of childhood and children's social relationships are valued in their own right. Crucially, childhood must be understood as a social construction, which can never be separated from other macrosocial characteristics. Childhoods are also intersections of differences: so provide opportunities for refiguring the ‘normative’ constitution of childhood and embrace non-normative and disruptive-as-productive forms of childhood. This fundamentally means recognising that the vast majority of children are non-white and poor, outside school and to be found in the Global South majority world.”

Gabel, S. and Danforth, S. 2008. Disability and the politics of education: An International Reader, New York: Peter Lang.



There are
78,64,636
children
with disability in India. They
constitute 17 per cent of the total
persons with disability. 1.7 per cent of
the children in India are disabled.

Children's growing up years are characterised by indicators that sometimes turns into euphemisms such as differently abled/challenged, *divyang*, social and the more politically correct child with disability (CWD). In India the markers would include terminology such as *bechara/ bechari* (roughly translated into a patronising "poor thing"); *langra/langri* (crippled), *andhaa* (visually impaired). Other countries would have their equivalent of these.

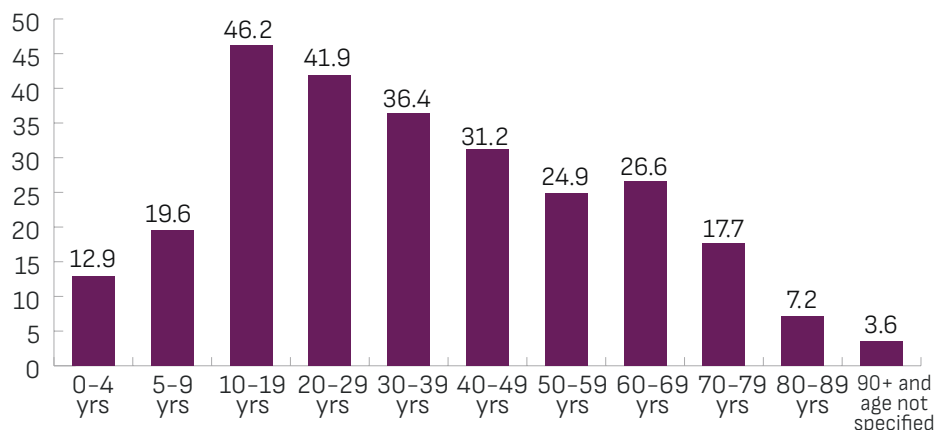
What society often tends to forget is that impairments may be temporary or permanent, requiring temporary or long-term measures. Any person can have an impairment at any time, leaving them disabled. This is something almost everyone forgets. An 'abled' person today may become a disabled person at any moment as a result of an accident or an illness.

It is a painful and disillusioning realisation to recognise that disabled children occupy a marginalised position in Indian society, and indeed, in most other societies across the world, based on their disability and as also their socio-cultural identities that separate them into categories constructed according to such properties as caste (in South Asia and in some other countries), class, gender, ethnicity, and urban/rural divide. Indeed, disability is a deficiency that becomes a defining characteristic of the child, accounting mostly in terms of a 'medicalised' life history.

THE DISABILITY AMONG CHILDREN (0-6 YEARS) IS A MATTER OF SERIOUS CONCERN AS IT HAS WIDER IMPLICATIONS.

- The Census 2011 showed that, in India, 20.42 lakhs children aged 0-6 years are disabled. Thus, one in every 100 children in the age group 0-6 years suffered from some type of disability
- 1.24 per cent of the total children (0-6 years) are disabled. The percentage of male disabled children to total male children is 1.29 per cent and the corresponding figure for females is 1.19 per cent.
- The proportion of disabled males to total males is higher than the corresponding proportion for females at all India and at rural and urban areas. The same pattern has been observed in the case of children (0-6) years.
- The proportion of disabled to the total population for all ages is higher in rural areas for both males and females, while for children; the same is higher in urban areas

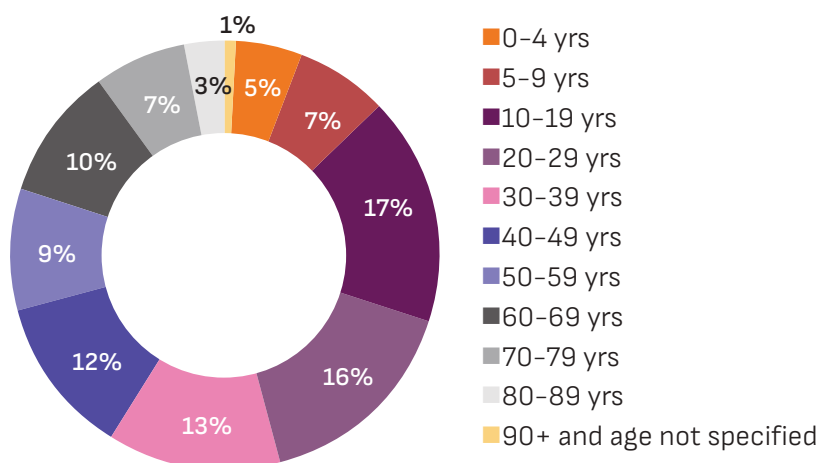
FIGURE 1 DISABLED POPULATION (IN LAKHS) BY AGE GROUP IN INDIA - CENSUS, 2011



Source: Disabled Persons in India- A Statistical Profile 2016. Ministry of Statistics and Programme Implementation. Government of India

Out of the total disabled in the age group 0-19 years, 20 per cent have hearing impairment followed by 18 per cent with impairment for seeing. And 9 per cent have multiple disabilities.³

Unveiling a structural amnesia that Indian society displays, children who do not fit into the hegemonic discourse of "normality" are rejected, detached and disempowered.

FIGURE 2 PERCENTAGE DISTRIBUTION OF DISABLED POPULATION BY AGE GROUP IN INDIA – CENSUS, 2011

Source: Disabled Persons in India – A Statistical Profile 2016. Ministry of Statistics and Programme Implementation. Government of India

Unveiling a structural amnesia that Indian society displays, children who do not fit into the hegemonic discourse of ‘normality’ are rejected, detached and dis-empowered. In a form of social and cultural apartheid, this seclusion is sustained by the creation of a built environment with amenities that solely cater to the needs of the more complete and able-bodied ‘Other’. This social indifference coupled with experiences of social, economic, educational and political subjugation deny disabled children a life that can be lived.

As Vanessa Singh and Anita Ghai point out:

“Children are considered ‘disabled’ if they have an identifiable level of ‘deficit’ when formally measured or compared with a social/cultural norm of learning, physical abilities, etc. Like ‘disabled’, children too are denied attributions of agency, competence and civil rights.”⁴

Given this context wherein the disabled are coded as dependent, it is not surprising that disabled children’s lives remain marginalised and invisible. This is not only because of the way rest of society views disability, which is also reflected in the State’s response, but also because disabled children themselves in their actions and behaviour reflect these ideas and assumptions.

Identity and Disability

Believing that ‘disabled’ children have a unitary identity which is based on their being ‘disabled’ leads to a denial of other significant aspects of their experience. The fact is that children with disability (CWD) are more than just their disability. Like any other person, they too hold multiple identities within them, based on their gender, ethnicity, caste, class or location. The nature of disability itself defines their capacities.

Davis and Watson⁵ and Khanna and Ghai⁶ indicated how ‘disabled’ children encounter discourses of ‘normality’ and ‘difference’ in the home, school, playground, arising from institutional factors and everyday cultural practices. In Goodley’s words, “deficit thinking surrounds disabled people”.⁷ Thus, ‘disabled’ children need to be understood as social actors, as controllers who are negotiating their complex identities within a disabling environment. Consequently, CWD continue to search for their own identities and personhood.

The sense of self in a child with disability is a fundamental factor in the construction of his or her very person, that is ‘me’.

The disparity between the ‘child first’ epitomises the realities of antagonism and segregation CWD face that is both a contradictory and a theoretically productive space. CWDs experiences underwrite an understanding of embodiment and identity. The effects of policy on family and society are

everyday life-long experiences.⁸ When disabled children are positioned outside the standards of ‘normal’, exploitation goes unrecognised and ‘ordinary’ community activities remain inaccessible and unresponsive, if not intimidating towards disabled children.⁹ However, in the case of CWD the sense of self is not only constructed by society. Infact the child’s disability is a fundamental factor in the construction of his or her very personhood, that is ‘me’.

Discrimination and ‘Othering’

‘OTHERING’ – THE REALITY OF LIVES OF CHILDREN WITH DISABILITY

Constituted as being profoundly ‘Other’, disability symbolically represents lack, tragic loss, dependency and abnormality. Though it appears that children are protected by a cohesive and constant familial network, in fact that is not so.

What is clear is the trajectory of stigmatisation experienced by disabled children in India. They are subjected to obnoxious forms of discrimination. When poverty, physical neglect and social downgrading intersect, the impact on the disabled child can be devastating. CWD are kept hidden away in their home, denied basic rights of mobility, education, recreation that translate to personhood.

They are viewed only as dependent persons. Such prejudices are initiated from family members and spreads right up to the policy makers and state authorities. As a result of such discrimination, disabled children face chronic ill health, socio-economic burden and destitution. It is incomprehensible to define the extent of relegation — as to whether they are outside the margin or within the community. When invisible, they are locked in the rooms, institutionalised, enrolled in special schools, or simply not admitting that they have Children With Disabilities (CWDs).

Social defiance and stigma play a momentous role in restricting the opportunities of disabled children for full participation in social and economic life, often even within their own families whether rural or urban. For instance Firdaus Kanga’s mother loved him without reservation from the moment of his birth, while his father could never really come to terms with his son’s ‘deformity’. Kanga’s anguish is reflected in the following quote in which he could understand his mother’s ambivalence in the form of exhaustion:

“I broke my leg again on the journey back to Bombay. When we went back home with my leg in a cast, Sera [my mother] wasn’t surprised. “The holidays are over, I suppose,” she said. Imagine needing a holiday from your own child wishing you didn’t feel like that, because you love him, and you don’t need holidays from someone you love. So the question slides up into your mind: When I said that bit about really loving my son, did I mean it? That was a question Sera fought all her life. And whenever she wasn’t too sure of the answer, I could sense it like the crows outside my window could sense a monsoon shower. If there is one thing worse than doubting if you love your kid, it’s being the kid in question.”¹⁰

There is not enough data gathered on all aspects of the disadvantages children with disability have to face. The best documented is perhaps on access and right to education. However, it is imperative to highlight some of the areas, which are only examples of the larger challenges that children face. It is well recognised that there is a wide spectrum of disabilities which brings with it a range of challenges and special needs.



As a result of discrimination the disabled children face chronic ill health, socio-economic burden and destitution.

Denial of Disability

Primarily in the cases of mental or intellectual disability, the family members, community and society are reluctant to accept the disability or they search for 'cure'. There is a fear that they would become victims of disgrace and indignity and lose status or acceptance that they enjoy in the community. The shame attached to disabilities that makes them hide the fact of having a disabled child, ultimately leads to social seclusion of the children and restraining their activities. This denial becomes an obstacle for early identification and treatment of children with disabilities.¹¹ CWD would be hidden somewhere and be expected to overcome the situation without realising the long term impacts of actions.

Social Constructions

Superstitions prevailing in the communities also play a big role in subjecting the children with disabilities to various harmful treatment. A disabled child is constantly in a mental state of deferment, awaiting the day the body will be not just be mended but cured.¹² Until then, the disabled tend to impersonate the abled-bodied. They are considered disembodied. Rehabilitating the body thus becomes the running theme of the story in the lives of the disabled children. Stigmatised for having disabled children, families avoid taking disabled children to public spaces and social gatherings.

The quest for process of cure, therefore, has often been a long-drawn-out costly process, and doomed to failure. Negotiating with shamans, *gurus*, *ojhas*, tantric priests, and faith healers, as well as quacks who physically hurt children, subject them to multiple restrictions etc. is common. There are mothers who have tied their child with cerebral palsy under the tree, whenever she went to earn her livelihood. The trauma both for mother and child is unbearable.



"As a child, I recall severe and mild cures such as being placed in mud-pit during a solar eclipse, urine therapy and hot water baths in month of June, (peak summer in Delhi with temperatures raging to over 40° C) after which I was given a massage of hot oil. These still create traumatic memories."

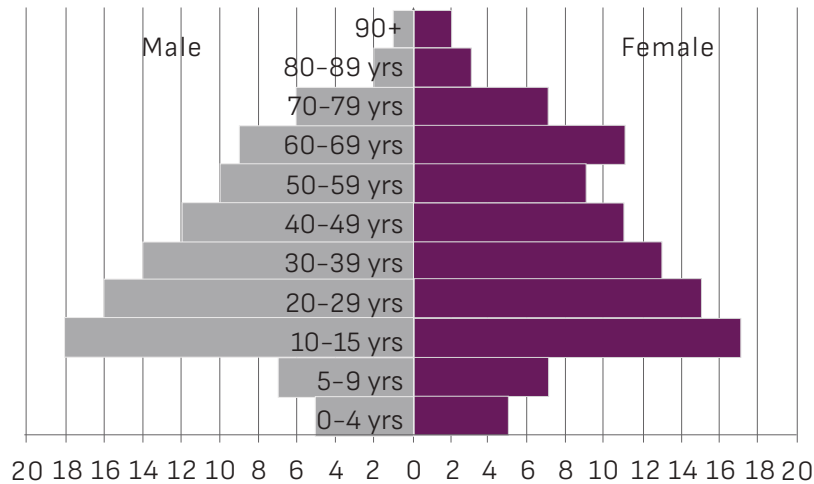
Gender Concerns

Disability in the Indian context is often understood as a 'lack' or 'deficit' as well as a 'difference'. Very few children accept the fact that disability is as much a social construct as, say, gender. Since the normative culture in India and the world over carries existential and aesthetic anxieties about differences of any kind, be it caste, class, gender, race or disability, children who are impaired in any way have to live with markers such as 'disabled', 'handicapped', 'crippled', 'differently-abled' and 'special'. This results in an existence marked by acute marginalisation, discrimination and stigmatisation, and disability appears more as a personal quest and tragedy to be borne alone. Even those of us who have lived and studied in apparently inclusive educational institutions, have felt the intolerant attitude of Indian society towards disability.¹³

As per the cited source, the Census 2011, of all age groups, it is the adolescent age group (10-19 years) that has the largest percentage of girls and boys who are disabled. This is undoubtedly also the most vulnerable age group in terms of violence and exploitation.

The disabled girls are multiply disadvantaged and deprived in most societies driven by patriarchy where being a girl and being

She said, "I know my son is having less intelligence, may be some degree of intellectual disability, but I do not want to become member of the disability self-help group because I have two more daughters who need to get married, my association with disability self-help group would be self-certifying of my son's problem"

FIGURE 3 GENDER DISTRIBUTION OF DISABLED POPULATION IN INDIA. CENSUS 2011

Source: Disabled Persons in India- A Statistical Profile 2016. Ministry of Statistics and Programme Implementation. Government of India

disabled are both considered a curse. This is indeed double jeopardy. Despite the same legal stipulations, disabled girls still experience marginalisation in both familial spaces as well as social spaces such as education, employment, recreation and intimacy. There are other types of discrimination too. Disabled girls experience forced sterilisation and the reason is the fear of pregnancy.

A study conducted by Oxfam Trust in 12 districts of Odisha, which surveyed 729 disabled women, girls and family members, found that 6 per cent of women with a physical disability and 8 per cent of women with intellectual disabilities had been subjected to forced sterilizations. This indeed is a violation of their rights.¹⁴

What is more, it is often the mothers who seek this for their daughter because they are apprehensive of abuse or rape that might result in pregnancy. In a way we tend to legitimatise abuse, as support systems are not provided to girls whose parents do not seek sterilization and hence are still at risk of physical and verbal abuse.

Shobha Vishwakarma, 45, has a 16-year-old daughter with an intellectual disability. “I never spoke to my daughter about menstruation before the onset of her menarche”. Vishwakarma says. “And when I did, it was probably too late. She just wouldn’t agree to wear a sanitary napkin, and would soil her clothes every time she got her period. It was embarrassing. We have men at home; there are boys in her school.” She admits she was violent to her daughter when she started menstruating. “It would break my heart, but I would have to yell at her, beat her up – I didn’t know better. But after her third cycle, she has been using the napkin without much protest.”

Despite efforts to ban forced hysterectomy for mentally and physically challenged girls, the issue remains alive in the form of Silenced Wombs.¹⁵ There are demands for a special charter for protecting the rights of persons with disability with separate provision for protection of rights of women with disability. Project Samarth is designed to make sure girls do not have to experience abuse to learn about menstruation, just because they have disabilities.

Disabled girls and boys, are far more susceptible to abuse and ill-treatment. A child who is physically challenged may understand what is happening and is aware of the consequences of the abuse, but lack of mobility can be a major handicap. In the case of the mentally challenged children, they are unaware of the consequences of the act and may even submit “voluntarily”. Recognising the special situation of such children, an intellectually impaired girl cannot legally give consent to be a party to a physical act as she does not understand the consequences. What is worse, the legal mechanism is often ill-equipped to deal with such cases. There is no provision in the judicial system that requires special assistance to the mentally challenged victim to be able to give their statement in court. This is therefore left to the sensitivity of the presiding judge.

Education and Children with Disability

Negotiation with the education system has always been a serious concern of disabled children. The policy documents related to Education in India say that the objective is to ensure that physically and mentally impaired should be integrated with the general community as equal partners to prepare them to face life with courage and confidence.

The 2019 “State of the Education Report for India: Children with Disabilities” took into account the 2011 census, according to which there are 78,64,636 children with disability in India constituting 1.7 per cent of the total child population. A UNESCO report highlighted that the number of enrolled children drops significantly with each successive level of schooling.¹⁶ Not surprising, given the gender discrimination that is all pervasive, the number of girls with disabilities in schools was “fewer” than boys. Three-fourths of the children with disabilities at the age of five years and one-fourth between 5-19 years do not go to any educational institution, the report said. Although theory and practice in developed countries has largely moved towards inclusive education, there has been some critique in the India as Government of India has preserved the discrimination in the way it delivers programmes for the disabled.

Three-fourths of the children with disabilities at the age of five years and one-fourth between 5–19 years do not go to any educational institution. The number of girls without access to education is more than boys.

With the mandate for providing education falling between two ministries, the right of CWD often fall through the cracks.

The reality is that the insidious term ‘special’ always goes against the development of knowledge and skills on inclusive education. etc.

The biggest challenge is that the educational needs of CWD are met by more than one ministry. Whereas the general educational needs come under the purview of Ministry of Human Resource Development (MHRD), the responsibility for *special education* is discharged by the Ministry of Social Justice and Empowerment, thereby sandwiching the disabled children between the two ministries. The result is that though various schemes were launched in the country to promote education of CWD, the vision of true inclusion seems to be lacking.

Different programmes and schemes of the Government of India such as the Integrated Education of Disabled Children (IEDC) launched in 1974 (revised in 1992), District Primary Education Programme (DPEP), Janshala- the joint programme of the Government of India and five UN agencies, Sarva Shiksha Abhiyan (SSA) have all, over time, reiterated the need for a just inclusion of disabled children in regular schools. All these have been or continue to be under the MHRD. At the same time, under the Persons with Disabilities Act (Equal Opportunities, Protection of Rights and Full Participation), 1995, better known as PWD Act, as well as the UN Convention on the Rights of the People with Disabilities in 2006 (that is ratified by India), the central and state governments and local authorities are legally bound to provide access to education to all the disabled children in inclusive school settings. However, the part-time classes, non-formal education, open schools for CWD that the Act offers belie the thrust on inclusion.

Lack of trained teachers and personnel is part of the problem. Training of teachers (Special Educators) is not a part of the curriculum of teacher training institutes such as the Central Institute of Education (CIE) in Delhi. The reality is that the insidious term ‘special’ always goes against the development of knowledge and skills on inclusive education etc.

Disabled children are often beaten, insulted or terrorised by teachers, particularly untrained teachers who do not understand the limitations of some disabled children. Reports worldwide find that all disabled children are probable victims, children with intellectual disabilities and children with hearing impairments are particularly at risk.¹⁷ Carnal exploitation by teachers is also widely reported for both male and female students.

Health Concerns

Article 47 of the Constitution of India imposes on the Government a primary duty to raise the level of nutrition and standard of living of its people and make improvements in public health - particularly to bring about prohibition of the consumption of intoxicating drinks and drugs which are injurious to one's health except for medicinal purposes. The health laws of India have many provisions for the disabled. Some provisions for health of the citizens including the disabled may be seen in the Mental Health Act, 2017.

Despite improvement in the health care system in the country, the situation of disabled children remains deplorable, particularly in rural areas and among the lower socio-economic population. Disabled children are subject to multiple deprivations and limited opportunities in several dimensions of their lives. It follows that children with disabilities are equivalently entitled to the maximum reach of care- from immunisation in infancy, to proper nutrition and treatment for the ailments and injuries of childhood, to confidential sexual and reproductive health information and services during adolescence and into early adulthood. Equally critical are such basic services as water, sanitation and hygiene. A large number of children with disabilities are born into poor households, leading to double jeopardy. Adding dimensions of gender and social status only multiplies the challenges.

For instance, scholar such as Ajit K. Dalal, clearly states that there exists a vicious cycle between poverty and disability.¹⁸ According to him, lack of civic amenities, such as water, electricity and sanitation, become a fertile source for the causes of ill health and impairment in the majority world. As indicated by James D. Wolfensohn, former president of the World Bank “disabled children are also more likely than other children to live in grinding poverty. More than 1.3 billion children worldwide struggle to exist on less than 1 USD a day, and the disabled in their countries live at the bottom of the pile”.¹⁹

As I have stated elsewhere:

“However, access to early intervention services, including early detection and identification, support and training to children and their families is still a dream in a number of countries across the world. This resulted in increasing disabilities resulting from malnutrition, from causes such as low-birth weight and premature birth, or neural tube defects (NTD), a condition that leads to considerable and irreversible disabilities which are linked to maternal health and can be prevented by including folic acid supplements in pregnant women's diet”²⁰

In fact in India, the prevalence of the biological reality of particularly polio and blindness is at least four times higher among those who are below the poverty line than those who are above it. With lack of immunisation facilities, malnutrition, unhygienic living conditions, hazardous occupations, child labour and heightened exposure to violence, the ordeal of disability seems unbearable.

The fact that human made disasters create disability for the poor children is clearly evident. For instance, the lack of care due to systemic fallacies leads to medical complications during pregnancy leading to the birth of children with disabilities.

The population census data 2011 also points out similar trends when it says that 69 per cent of the total population of persons with disabilities in India resided in rural areas. It is primarily because of lack of awareness, lack of care provided to pregnant women and lack of good and accessible medical facilities that the number of children with disabilities in rural areas is more than double the number in urban areas.

So, a large percentage of the population with disabilities can be reduced if causes for child births with disabilities can be eliminated. For eliminating both these barriers, the state governments need to invest heavily in their health sector as health comes under the ‘state subject’ in our constitution.

Disabled children in poor families are not provided sufficient money to meet their basic survival needs. Unsatisfactory shelter, unsanitary living conditions, and inaccessibility to clean drinking water combined with poor access to health facilities lead to disability. Malnutrition²¹ is a cause of disability as well as a factor in other ailments that increase vulnerability to disabling conditions. The real challenge is to fight poverty that creates unhealthy conditions and increases the potentialities of inducing specific forms of disability along with increasing the vulnerability of CWDs.

Abuse and Violence

Disabled girls and boys, are far more vulnerable to abuse and exploitation. A child who is physically challenged may understand what is happening and is aware of the consequences of the abuse, but lack of mobility can be a major handicap. In the case of the mentally challenged children, they are unaware of the consequences of the act and may even submit 'voluntarily' to sexual abuse. Both physically and mentally challenged children are vulnerable to abuse and exploitation.

In a violent family setting, a child's disability often serves to compound and intensifies the pattern of violence and abuse. For example, a mobility impaired child (or wheel chair user) is not in a position to escape when beaten or assaulted physically or sexually. A child who is deaf may be unable to communicate about the abuse he or she faces to anyone outside his or her household, unless these outsiders speak sign language or understand the home signs the child uses. (And when the abuser is the one interpreting the child's statement to someone outside the household, this further limits the child's ability to report abuse or ask for help). A child who is intellectually impaired may not be able to forestall parental anger. CWD may be killed either immediately at birth or at some point after birth; and sometimes years after birth. The rationale for such killings is a belief that the child is better off dead. In 'mercy killings' a parent or caretaker justifies withholding basic life sustaining supports (usually food, water and/or medication) or actively takes the child's life through suffocation, strangulation or some other means, with the intention of 'ending suffering.'

National Crime Records Bureau, the government's source for data on crime, does not provide disaggregated data for persons with disability. Hence, it is not possible to provide exact data in the context of India.

Unfortunately, the National Crime Records Bureau, the government's source for data on crime, does not provide disaggregated data for persons with disability. Hence, it is not possible to provide exact data in the context of India.

In 2012, a report on the prevalence and risk of violence against children with disabilities found that overall children with disabilities are almost four times more likely to experience violence than non-disabled children. And that children with disabilities are 3.7 times more likely than non-disabled children to be victims of any sort of violence, 3.6 times more likely to be victims of physical violence, and 2.9 times more likely to be victims of sexual violence. Children with mental or intellectual impairments appear to be among the most vulnerable, with 4.6 times the risk of sexual violence than their non-disabled peers.²²

Source: Violence against adults and children with disabilities <https://www.who.int/disabilities/violence/en/>

Factors that place children with disabilities at higher risks are the very same issues discussed above—stigma, discrimination, and ignorance about disability, as well as a lack of social support for those who care for them. Institutional care also increases their vulnerability to violence, especially children with communication impairments who do not have the ability to disclose abusive experiences.²³ On 18th September 2007, NDTV reported that a two-and-a-half-year-old girl with cerebral palsy was abandoned by her family. In 42-degree celsius heat, the girl was lying under the bushes. Workers at the metro construction site in Noida's Sector 14, near Delhi, found her and took her to the police, who asked an NGO to help out. Doctors say it's clear that she had not eaten anything for two days.

Human Rights Watch undertook a study on sexual violence against women and girls with disabilities and it observed:

"Women and girls with different disabilities face high risk of sexual violence in India. Those with physical disabilities may find it more difficult to escape from violent situations due to limited mobility. Those who are deaf or hard of hearing may not be able to call for help or easily communicate abuse, or may be more vulnerable to attacks simply due to the lack of ability to hear their surroundings. Women and girls with disabilities, particularly intellectual or psychosocial disabilities, may not know that non-consensual sexual acts are a crime and should be reported because of the lack of accessible information."²⁴

In June 2013, Chandra, a 12-year-old girl with cerebral palsy, was kidnapped, raped and left bleeding in a field near her home in West Bengal state, India. Chandra was unable to speak, sit, stand, or walk independently, so she could not call for help or go home. After several hours, some villagers found Chandra in the field. She died a few months later due to health complications.

Source: Human Rights Watch. *Invisible Victims of Sexual Violence- Access to Justice for Women and Girls with Disabilities in India*. 2018

"The sexual abuse of children with disabilities is a distressing and difficult area of safeguarding practice that demands a coherent and consistent response. It tends to provoke splits where the risks are either dismissed out of hand or escalated into a justification for disproportionately restrictive measures."²⁵

SEXUAL RIGHTS OF DISABLED WOMEN

...When girls with disabilities reach puberty, parents look for ways to protect them from sexual abuse and unwanted pregnancy. Hysterectomy is often what they are told is the solution...

"More than the fear of abuse, it is the fear of discredit that the pregnancy will bring to the families," says Nandini Ghosh, assistant professor at the Institute of Development Studies, Kolkata. "Most cases of abuse don't happen in public places but inside homes, institutes, hospitals," she says.

Source: <https://www.livemint.com/Politics/FDPpol4lJ0pX037spUU1kL/Sexual-rights-of-disabled-women.html>

Apart from familial violence, disabled children spend part or all of their lives in institutional settings, be it in schools within their communities, disability-related residential schools, institutions or hospitals, or in the criminal justice system. In all cases, being disabled increases and compounds their risk of becoming victims of violence.

SEXUAL ABUSE, LACK OF TRAINED STAFF, BUT NO REGULAR AUDITS AT MUMBAI SHELTER HOMES

Following the death of five mentally challenged children due to malnourishment at a Thane home in 2011, the Bombay High Court took suo motu cognizance and appointed a five-member Maharashtra State Co-ordination Committee for Child Protection to submit a report on condition of shelter homes for mentally deficient children (MDC).

In its report, TISS found that these homes were grounds for sexual abuse and neglect, and no regular inspections were being conducted there. "It is clear that the grant-in-aid provided to the NGOs does not reach the children for whom it is meant. The children are being forced to live like animals, not given proper food and medical aid, education, and often subjected to physical and sexual exploitation," the report observed. Maharashtra has 23 MDC homes. Following the TISS survey, 35 children were rescued from Thane and Panvel homes, where they had been subjected to sexual abuse. One home in New Panvel — where 19 girls were sexually abused — did not provide undergarments, educational or vocational training to children. On top of that, the children used to be physically and sexually abused.

Source: <https://indianexpress.com/article/cities/mumbai/sexual-abuse-lack-of-trained-staff-but-no-regular-audits-at-mumbai-shelter-homes-5347709/>

Recognising the special situation of such children, in cases where an intellectually impaired girl cannot legally give consent to be a party to a physical act as she does not understand the consequences, and is unable to produce an evidence, as understood in mainstream vocabulary of judiciary, to be able to comprehend the situation and deliver a properly assessed judgement is left to the sensitivity of the presiding judge. A parent petitioned the Supreme Court that her 38 years old with a mental age of a three-year-old be treated as a 'child' under the Protection of Children from Sexual Offences Act 2012 (POCSO)²⁶. Although not on the basis of mental age, demands have also been made in the past by disability rights activists to make some POCSO provisions applicable to disabled adult victims of sexual assault. threatened by the accused.²⁷

Sexuality and Sex Education

Sexual identity is a significant component of personhood and self-esteem, which matures during adolescence. CWD are at a particular disadvantage in this regard as well. Parents tend to be over-protective towards the disabled child and often infantilise them and imply that sex is only for the able-bodied and of no relevance to the disabled. Priti Prabhugate an activist with Humsafar Trust says, "Difficulties for the disabled child include misconceptions that disabled people are asexual or hypersexual. The myth is that people assume that intellectually disabled people are potential sexual deviants, and should be denied sex education in case it 'gives them ideas.'"²⁸ As a result, a child with intellectual disabilities may be confused by sex education unless the information is presented to them in ways they can understand. Acknowledging the importance of recognising the sexuality of CWDs, there is a need to teach them differences between private and public behaviours and address their anxieties.

Accessibility Concerns

Disability, can impede children from enjoying going out and having fun with their friends and peers, which Carol Thomas described 'barriers to doing,' which are restrictions of activity arising from social or physical factors.²⁹ Department of Empowerment of Persons with Disabilities (DEPwD), Ministry of Social Justice & Empowerment has conceptualised the 'Accessible India Campaign (Sugamya Bharat Abhiyan)' as a nation-wide flagship campaign for achieving universal accessibility that will enable persons with disabilities to gain access for equal opportunity and live independently and participate fully in all aspects of life in an inclusive society. The campaign targets at enhancing the accessibility of built environment, transport system and information & communication eco-system. Two years after the launch of Accessible India Campaign for universal accessibility, most states have not shown good response to the programme to make government websites accessible to the differently abled.³⁰

However, data shared by DEPwD at the day-long National Conference on Improving Accessibility, held in Delhi in January 2019, reveals a grim picture. The response of only three states – Chhattisgarh, Meghalaya and Haryana – to the project has been 'very good,' according to the data, while government in West Bengal and Assam have been "non- responsive" to the initiative. Disabled children wanted resources, equipment and support so they could access everyday things, which most children take for granted, such as interacting with friends, and playing in the sports fields. Even a simple pleasure such as going to watch a movie is unattainable. Adding ramps for instance to schools are not audited to figure out the slope etc. Endorsing the shift towards inclusion in built and social environment is the concept of Universal Design. Disability activists have advocated 'Universal Design' to create a model of inclusion which aims to overcome exclusionary barriers.³¹

Law, Policy and Rights

INCLUSION OF RIGHTS FOR CHILDREN WITH DISABILITY IN POLICY AND PLANS

The National Charter for Children, 2003	<p>The charter aims to ensure that children with disabilities are helped adequately to lead a full life with dignity and respect, integrated into the mainstream, provided education, training, health care, rehabilitation, recreation and early intervention</p>
The National Policy for Children, 2013	<p>The Policy takes special care of the children with disabilities and aims to provide, on a priority basis, health, nutrition, development, education, protection and participation, for them. This policy guides and governs all laws, policies, plans and programmes affecting children.</p>
National Plan of Action for Children 2016	<p>Facilitate barrier-free environment at all bus stops and railway stations for CWD.</p> <ul style="list-style-type: none"> - Ensure special stoppage points on bus routes near schools with sign-boards indicating access only for children with disability. - Coordinate with state/UT governments to issue instructions for bus conductors and drivers to help and support CWD. <p>Ensure availability of disability certificates by organising camps at block/panchayat level</p> <ul style="list-style-type: none"> - Implement schemes for persons with Autism, cerebral palsy, mental retardation and multiple disabilities under National Trust Act (Disha, Vikaas and Samarth).
	<ul style="list-style-type: none"> - Provision of Referral services, rehab services, assistive devices <p>Ensure identification of slow learners and provide them special learning programmes i.e., children having learning disability e.g. dyslexia</p> <p>Coordinate with state and district administration, SMCs, PRIs and NGOs to track all Out of school Children (the list includes children with disability)</p>
Draft –National Disaster Management Guidelines	<p>The Guideline's framework takes into account:</p> <ul style="list-style-type: none"> • Recognition of the issue of disability inclusion to ensure that persons with disabilities are fully engaged in DRM activities. • Inclusion of persons with disabilities at all levels of DRM especially decision making • That inclusion does not view persons with disabilities as passive actors but as decision makers in the process. • The purpose of inclusion is to ensure that barriers are removed and/or do not impede the (sic) • To enhance awareness and knowledge about disability and the needs of persons with disabilities amongst stakeholders.

Children with disabilities come under the purview of the Ministry of Social Justice and Empowerment (MSJE). Some of the issues like prevention and curative aspects are dealt by the health ministry. However, no single ministry has taken the responsibility of meeting the all-inclusive needs of CWDs. Disability continues to be trapped in Social Welfare. Despite UNCRPD, the thinking process is dominated by the charity mode. As disability is a state subject, each state has their own issues.

In the 2030 agenda for Sustainable Development (Sustainable Development Goals (SDG)) 'Persons with disabilities' or 'disability' is specifically mentioned eleven times and 'Persons in vulnerable situations' is specifically mentioned six times. Some of the SDGs are addressing issues related to disabled persons. The SDG 4 is aiming at 'Guaranteeing equal and accessible education', SDG 6 is for 'Promoting inclusive economic growth, full and productive employment', SDG 10 is for 'Emphasis ing the social, economic and political inclusion of persons with disabilities', SDG 11 is for 'Creating accessible cities and water resources, affordable, accessible and sustainable transport systems' and SDG 17 is for 'disability disaggregated data'. While data on disabled persons is specifically required for monitoring these SDGs, such data is required for other SDGs also.

Conclusion

The end of exclusion of disabled children from full status is still a dream that will take a long time to be fulfilled. Disability is influenced by ability expectations. Disability and otherness 'relates not as binarisms in postcolonial discourse but in ways in which both are complicit and resistant, victim and collaborator and oppressed and oppressor'.³² Colonialism does not require one to hold the power only to occupy a country. It can be accomplished by dominant normative hegemonies through social apartheid. Ability expectation is a form of social apartheid.

Endnotes

- 1 Corsaro, W. A. .1997. *The sociology of childhood*. Thousand Oaks: Pine Forge Press
- 2 UN Convention on the Rights of Persons with Disabilities
- 3 Ministry of Statistics and Programme Implementation. Social Statistics Division. Government of India. 2016. *Disabled persons in India- A Statistical Profile*. http://mospi.nic.in/sites/default/files/publication_reports/Disabled_persons_in_India_2016.pdf <https://enabled.in/wp/disabled-population-in-india-as-per-census-2011-2016-updated/> Last accessed 12 November 2019
- 4 Singh, Vanessa and Ghai, Anita. 2009. 'Notions Of Self: Lived Realities Of Children With Disabilities', *Disability & Society*,24:2, pages 129–145
- 5 Davis, J. & Watson, N. 2001 Where are the children's experiences? Analysing social and cultural exclusion in 'special' and 'mainstream' schools, *Disability & Society*, 16(5), pages 671–687.
- 6 Khanna, R., and A. Ghai. 2005. *Meaning of disability: Through the voices of children*. Project report submitted in partial fulfillment of the requirement for the Bachelor of Arts(honours) degree in Psychology, University of Delhi, India
- 7 Goodley, Dan, 2007. *Towards socially just pedagogies: Deleuzoguattarian critical disability studies*, *International Journal of Inclusive Education*, 11:3, 317–334, DOI: 10.1080/13603110701238769 page 319
- 8 Shah, S. 2013. "Remembering School in Different Historical Worlds: Changing Patterns of Education in the Lives of Disabled Children and Young People." In *Disabled Children's Childhood Studies: Critical Approaches in a Global Context*, edited by T. Curran and K. Runswick-Cole, pages 57–88. Basingstoke: Palgrave
- 9 Goodley, D., and K. Runswick-Cole. 2011. "The Violence of Disablism." *Journal of Sociology of Health and Illness* 33 (4): 602–617.10.1111/j.1467
- 10 Kanga Firdaus. 1990. *Trying to Grow*. Penguin Books India . New Delhi page 63. and Ravi Dayal Publisher, 2008.
- 11 She said, "I know my son is having less intelligence, may be some degree of intellectual disability, but I do not want to become member of the disability self-help group because I have two more daughters who need to get married, my association with disability self-help group would be self-certifying of my son's problem"
- 12 Ghai Anita . 2015 *Rethinking Disability in India* . Routledge: New Delhi
- 13 Ghai, Anita. 2009. *The Women's Movement Must Do More for Disabled Women*. InfoChange Agenda. Retrieved from <https://disabilitynewsworldwide.wordpress.com/2009/06/24/the-womens-movement-must-domore-for-disabled-women> Last accessed 12 November 2019
- 14 <https://www.globalcitizen.org/en/content/forced-sterilization-girls-disabilities-hysterecto/> Last accessed on 28.7.19 Last accessed 12 November 2019
- 15 Hindu, August 4th, 2013 <https://www.thehindu.com/features/the-yin-thing/the-silenced-wombs/article4985813.ece> Last accessed 30 July 2019
- 16 <https://www.affaircloud.com/unesco-releases-state-of-the-education-report-for-india-2019-in-new-delhi/> (Last Accessed. 3 July 2019).
- 17 <http://vikaspedia.in/education/parents-corner/guidelines-for-parents-of-children-with-disabilities/legal-rights-of-the-disabled-in-india?content=small#section-4> Last accessed 12 November 2019
- 18 Dalal, A. 1998. *CBR in Action: Some Reflections from the Sirathu Project*. *Asia Pacific Disability Rehabilitation Journal*, 9(1), pages 29–31
- 19 Quote from James D. Wolfensohn, former president of the World Bank, 2002
- 20 Ghai, Anita 2009. *Disability and the Millennium Development Goals: A Missing Link*, *Journal of health management*, 11(2), 279–295 <http://socp10.epgpbooks.inflibnet.ac.in/chapter/gender-and-disability/> Last accessed 12 November 2019
- 21 Common micronutrient deficiencies that affect disability include: Vitamin A deficiency – blindness, Vitamin B complex deficiency – beri-beri (inflammation or degeneration of the nerves, digestive system and heart), pellagra(central nervous system and gastro-intestinal disorders, skin inflammation) and anaemia, Vitamin- D deficiency – rickets (soft and deformed bones),Iodine deficiency – slow growth, learning difficulties, intellectual disabilities and goitre, Iron deficiency –anaemia, which impedes learning and activity, and is a significant cause of maternal mortality, Calcium deficiency – osteoporosis (fragile bones).
- 22 *Violence against adults and children with disabilities* <https://www.who.int/disabilities/violence/en/> Last accessed 12 November 2019
- 23 *Violence against adults and children with disabilities* <https://www.who.int/disabilities/violence/en/> Last accessed 12 November 2019
- 24 Human Rights Watch. *Invisible Victims of Sexual Violence- Access to Justice for Women and Girls with Disabilities in India*. 2018. page 5
- 25 Hilary Brown. *Sexual abuse of children with disabilities*. <https://www.coe.int/t/dg3/children/1in5/Source/PublicationSexualViolence/Brown.pdf> Last accessed 12 November 2019
- 26 The petition was made because of the extensive procedural protections available to child victims under POCSO. Inter alia, POCSO provides that: the police must automatically make provisions to protect the child if needed (s 19(5)); the victim's statement to the police must be videographed where possible (s 26(4)); in case of disabled victims, a special educator may be allowed to assist with the recording of the statement before (s 26(3)) or during (s 38(2)) trial proceedings; and tele-link technology can be used to record the victim's testimony (s 36(2)). However, POCSO only deals with sexual offences against those who are under 18 years old (S 2(1)(d)).
- 27 <https://ohrh.law.ox.ac.uk/the-intersection-of-age-gender-and-disability-in-the-prosecution-of-sexual-violence-in-india/> Last accessed 12 November 2019

- 28 <http://www.humsafar.org/rc/Other%20presentations%20and%20papers/Toronto%20World%20AIDS%20conference%20-%20Priti.ppt> Last accessed 12 November 2019
- 29 Thomas, C. 1999. *Female forms: experiencing and understanding disability* (Buckingham, UK, Open University Press).
- 30 <https://economictimes.indiatimes.com/news/politics-and-nation/accessible-india-campaign-no-good-response-from-states-to-make-websites-accessible-to-differently-abled/articleshow/62577894.cms> Accessed on 17.7.19
- 31 Story, M. F. 1998 'Maximising Usability: the principle of Universal Design' *Assistive Technology* 10: pages 4-12
- 32 Hooks, B. 1996. *Killing rage: Ending racism*. New York: Henry Holt and Co

11

SEXUAL ABUSE OF CHILDREN AND THE CHILD PROTECTION CHALLENGE

BHARTI ALI

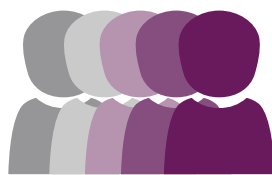


Introduction

In 2007, Government of India's National Study on Child Abuse shocked the nation when 53.22 per cent of children surveyed (both girls and boys) reported having faced one or more forms of sexual abuse. While drawing attention to all forms of child abuse, the study recognised sexual abuse as one of the worst forms. This called for a conscious move to strengthen the legal framework for child protection, and what began as an exercise on framing a law to deal with offences against children, resulted in a law specifically focussing on child sexual abuse. This was the Protection of Children from Sexual Offences Act, 2012, commonly referred to as the POCSO Act, enacted as a special and gender neutral law to deal with the problem through child sensitive procedures. What has changed since thus requires exploration.

Since the study also revealed that children seldom report such incidents, reporting was made mandatory under the law. Failure to report is liable to punishment and so is false reporting on any form of sexual assault, though fortunately this does not apply to children.

The Ministry was so taken aback by the data that came out through its own study that protection under the law was extended to all children



52.94%
boys



47.06%
girls

"Andhra Pradesh, Assam, Bihar and Delhi reported the highest percentage of sexual abuse among both boys and girls. Among them 52.94% were boys and 47.06% girls. The age wise distribution of children reporting sexual abuse in one or more forms showed that though the abuse started at the age of 5 years, it gained momentum 10 years onward, peaking at 12 to 15 years and then starting to decline."

up to the age of 18 years. All pleas not to raise the age of sexual consent were rejected. Subsequently, the criminal law was also amended to bring it in conformity with the POCSO Act, and thus the age of sexual consent stands changed from 16 years to 18 years. Taking this sentiment forward, the Supreme Court through its judgement in *Independent Thought vs. Union of India* [Writ Petition (Civil) No. 382 of 2013] extended the protection under the POCSO Act to all cases of child marriage, even though child marriage remains a valid marriage in law unless annulled by either party.¹

While introduction of minimum and maximum mandatory sentences was justified as a necessary response to deter such crimes, popular demand and the recent zeal and response of the government as well as most political parties has led to introduction of death penalty for child rape and stricter sentences in the name of child protection. As a first, the criminal law was amended in 2018 followed by the most recent amendment to the POCSO Act that came into force on August 16, 2019.

Offences relating to child pornography have received special attention in the recent amendment to the POCSO Act as the era of digital technology has posed serious threats to children's safety. Even though the spread of online child sexual abuse has received some attention in recent years, data and analysis in this regard remains very inadequate, or rather absent. The 2016 NCRB Crime Report for example, includes a chapter on Cyber Crimes and a Table on Cyber Crime motives (Table 9A.3), but fails to provide data pertaining to sexual abuse of children or child pornography as a motive.

Indeed child protection has become a concern and found a place in the political agenda today. However, the question that haunts people working with children is whether the new laws and rapid amendments have actually been able to ensure children better protection than before, and do we have evidence to guide us enough on the way forward.



Child protection has found a place in the political agenda today. However, the question that haunts people working with children is whether the new laws and rapid amendments have actually been able to ensure children better protection than before, and do we have evidence to guide us enough on the way forward.

What does existing data tell us?

SEXUAL OFFENCES AGAINST CHILDREN AND THE 2017 CRIME STATISTICS...

The latest Crime in India report is for 2017, released in October 2019. However, the way the data is computed presents serious challenges. Most important of all, it makes it near impossible to compare it with the previous years. Here are some examples:

1. Crime in India 2017 has added data on offences that were not reflected in earlier reports. It remains unclear whether these were subsumed under some broader categories of offences in the previous reports. All of this makes it impossible to generate comparative data or establish trends.

The new offences that get reflected as distinct categories and cannot be ignored while computing data on child sexual abuse are – attempt to rape, murder with rape/POCSO, publishing or transmitting of material depicting children in sexually explicit act.

2. The 2017 report maintains that it has followed the “principle offence rule” while computing data. This rule is followed to avoid double counting of the same data. However, examination of the data on sexual abuse shows some anomalies, which places a doubt on the extent this rule has been followed. For example, the Limitations and Disclaimer section in the report categorically states, “Murder with Rape is accounted for as Murder”. The category of ‘Murder’ thus includes two sub-categories, i.e., ‘Murder with rape/POCSO’

and 'Other Murder'. Such data has never been made available for the previous years. As a result, this has a tremendous impact on the assessment of number of sexual offences against children, showing a frightening 53.4 per cent increase in 2017 over 2016 (from 33,406 cases in 2016 to 51248 cases in 2017).

3. The 2017 Report has tried to give more detailed information on certain aspects of sexual offences against children, including gender disaggregated data. However, it is still half-baked on certain critical aspects of implementation of the laws. For example, while the data on number of conviction cases from the current year and the previous years is available separately, a calculation on disposal of cases within the same year is not possible because similar bifurcation is not available for other forms of disposal, including cases that ended in acquittal.

Similarly, the inclusion of data on offences against children by care takers/in-charge of childcare institutions is encouraging. Nevertheless, it can be further improved to give a sense of how many of these cases were of child sexual abuse.

4. Confusion regarding nature of disposal continues in as much as the 2017 data and that available for the previous years suggests use of compounding and compromise as well as plea-bargaining in cases of sexual offences with strict liability.

The 2017 data shows 57 cases [39 cases of penetrative and aggravated penetrative sexual assault under Section 4 and 6 of the POCSO Act respectively and 18 cases of child rape under Section 376 of IPC] were compounded or compromised through courts. Another 4 cases [2 cases of penetrative and aggravated penetrative sexual assault under Section 4 and 6 of the POCSO Act respectively and 2 cases of child rape under section 376 of IPC] were disposed through plea bargaining.

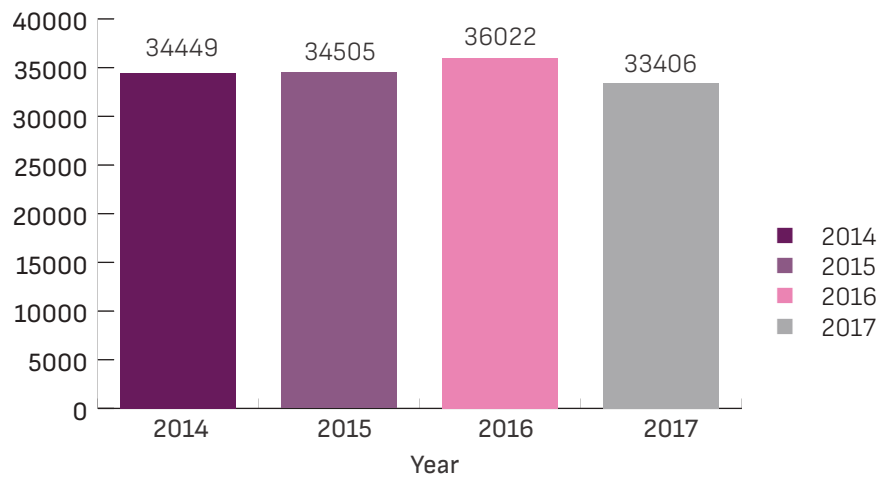
Given what is happening in reality, it is not impossible to conjecture that in all probability, most of these must have been those of romantic relationships or child marriage, and / or incest. Yet the government does not seem to be keen to understand such data and review provisions relating to age of sexual consent, mandatory reporting and stricter sentences, all of which is interconnected.

Much has happened in India in the last decade to break the silence surrounding sexual crimes against women and children, yet reporting remains dismal. An analysis by Livemint based on comparison of data from NFHS-4 and that obtained from the NCRB shows that an estimated 99.1% of sexual violence cases do not get reported.² While such a finding pertains to women, to what extent does this hold true for children is not known and cannot be estimated. Current data as well as experiences of those working with children suggest that the provision of mandatory reporting has not really helped in increased reporting on child sexual abuse. Cases that get reported are largely those where hiding the fact of abuse is difficult or reporting is required to protect family and/or community honour. For example, cases resulting in injury or pregnancy, cases where the sexual act is filmed and circulated, cases where the sexual act is seen by a third person, or cases of romantic relationships unacceptable to children's parents. The so called 'milder' forms of sexual abuse seldom get reported even if the fact comes to the knowledge of the child's parents/guardians or a third party, though the exception could be cases where the accused carries a different ethnic / religious / caste identity.

Needless to say, it takes time for every new law to roll out. But if implementation of critical pieces of legislation, particularly laws like the POCSO Act, remains poor even after almost six years of its coming into force, there is a need for serious review. Unfortunately, the existing data and the manner in which data is computed does not help in carrying out such a review.

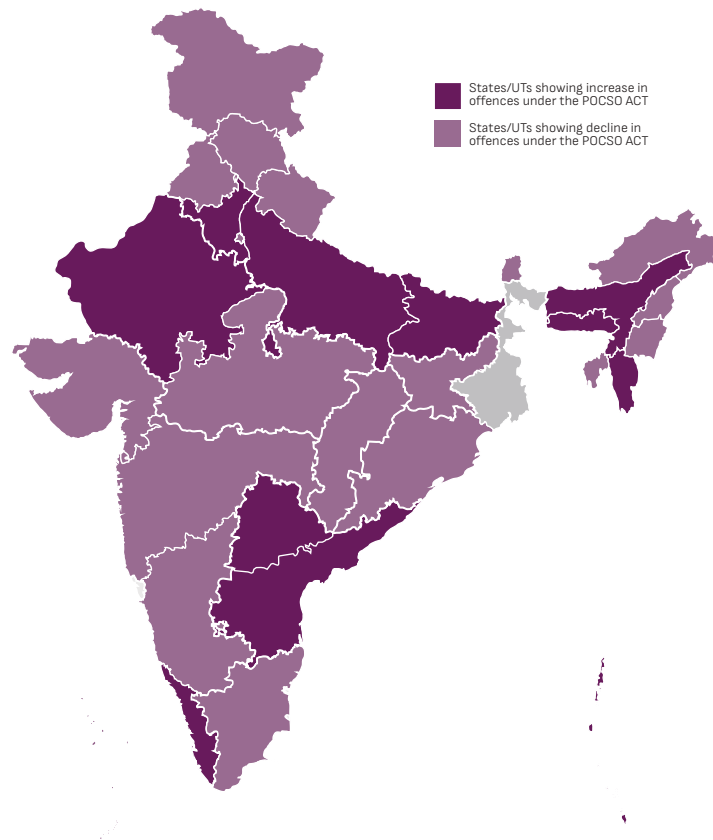


Cases that get reported are largely those where hiding the fact of abuse is difficult or reporting is required to protect family and/or community honour.

FIGURE 1 SEXUAL CRIMES AGAINST CHILDREN – POCSO ACT, SECTION 376, 354 AND 509 IPC

Source: Response to Rajya Sabha Unstarred Question No. 1106 for 26.07.2018 and Rajya Sabha Unstarred Question No. 2718 for 09.08.2018. **Note:** 2017 data for West Bengal is not available.

While crime data remains confusing, judicial data as well as data on police investigation is lacking in terms of pointing out the real problem areas requiring attention and tracking at police station, district, state and national level. Given the data limitations, an effort is made to present whatever is available in a manner that can provide some useful insights.

FIGURE 2 OFFENCES UNDER THE POCSO-ACT SHOWING INCREASE OR DECREASE IN NUMBER OF CASES REGISTERED (STATE/UT WISE)

Source: Response to Rajya Sabha Unstarred Question No. 1106 for 26.07.2018 and Rajya Sabha Unstarred Question No. 2718 for 09.08.2018. **Note:** 2017 data for West Bengal is not available.

TABLE 1: PROVISIONAL FIGURES FOR OFFENCES REGISTERED UNDER POCSO-ACT (STATE/UT WISE)

State/UT	Protection of Children from Sexual Offences Act 2012 / IPC Sections 376, 354 & 509 (2016)	Protection of Children from Sexual Offences Act 2012 / IPC Sections 376, 354 & 509 (2017 Provisional)	Percentage Change between 2016 and 2017
Andhra Pradesh	830	844	1.7
Arunachal Pradesh	59	44	-25.4
Assam	821	967	17.8
Bihar	233	456	95.7
Chhattisgarh	1570	1354	-13.8
Goa	75	60	-20.0
Gujarat	1408	1132	-19.6
Haryana	1020	1105	8.3
Himachal Pradesh	205	171	-16.6
Jammu & Kashmir	25	19	-24.0
Jharkhand	348	176	-49.4
Karnataka	1565	1411	-9.8
Kerala	1848	2391	29.4
Madhya Pradesh	4717	4118	-12.7
Maharashtra	4815	4354	-9.6
Manipur	43	35	-18.6
Meghalaya	151	298	97.4
Mizoram	167	197	18.0
Nagaland	27	36	33.3
Odisha	1928	978	-49.3
Punjab	596	424	-28.9
Rajasthan	1479	1656	12.0
Sikkim	92	78	-15.2
Tamil Nadu	1583	1314	-17.0
Telangana	1158	1177	1.6
Tripura	156	137	-12.2
Uttar Pradesh	4954	6782	36.9
Uttarakhand	218	123	-43.6
West Bengal	2132	NA	NA
TOTAL STATES	34223	31837	-7.0
A & N Islands	49	68	38.8
Chandigarh	51	68	33.3
D&N Haveli	11	1	-90.9
Daman & Diu	10	1	-90.0
Delhi UT	1620	1379	-14.9
Lakshadweep	5	4	-20.0
Puducherry	53	48	-9.4
TOTAL UTs	1799	1569	-12.8
TOTAL ALL INDIA	36022	33406	-7.3

Source: Response to Rajya Sabha Unstarred Question No. 1106 for 26.07.2018 and Rajya Sabha Unstarred Question No. 2718 for 09.08.2018

The National Crime Records Bureau (NCRB) is yet to publish crime statistics post 2016, although provisional figures for offences registered under the POCSO Act in the year 2017 has been shared by the Ministry of Home Affairs in response to two different Rajya Sabha Unstarred Questions. Since the response is based on NCRB data, it has been used to map the change between 2016 and 2017.

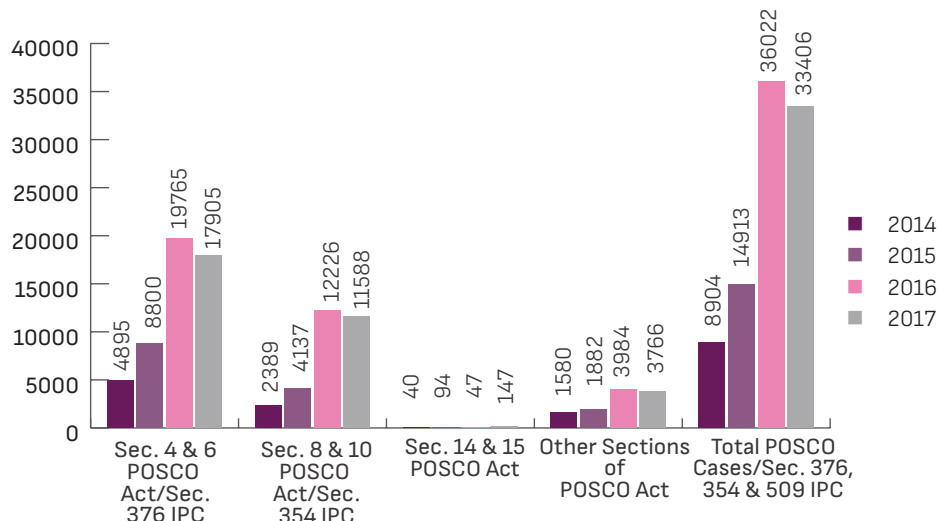
Considering that reporting is mandatory [Section 19, POCSO Act] and failure to report as well as failure to record/register an offence is liable to punishment [Section 21, POCSO Act], and non-registration of FIR in cases of sexual crimes against women is a criminal offence [Section 166A IPC], reporting should have gone up. On the contrary, nationally, between 2016 and 2017, there has been a 7.3 per cent decline in cases registered under the POCSO Act.

Of the 29 States and 7 Union Territories, 10 States and 2 Union Territories have witnessed an increase, while the rest have reported a decline.

Distribution of cases under the POCSO Act by type of offence also shows decline in number of cases registered under different provisions of the law. 2016 onwards, the NCRB clubbed certain offences to form different categories. In order to maintain parity and comparability, offence-wise data for 2014 and 2015 has also been clubbed on the same lines. With the exception of cases involving use of children for pornography or storage of child pornography for commercial purposes registered under Section 14 and 15 of the POCSO Act, there is a decline in all other categories of sexual offences. Increase in number of certain type of offences (offences relating to penetrative sexual assault and those relating to aggravated penetrative sexual assault) between 2014 and 2015 may be explained in terms of better use of provisions of the POCSO Act while registering a case. A similar explanation may be applied to the increase in child pornography related cases between 2016 and 2017. However, the overall decline in number of cases, including different categories of offences remains unexplained.

Despite mandatory reporting, with non-reporting being an offence there has been a 7.3 per cent decline in cases registered under the POCSO Act

FIGURE 3 NUMBER OF CASES REGISTERED UNDER THE POCSO ACT BY TYPE OF OFFENCE 2014 TO 2017



Source: NCRB, Crime in India Reports, 2014–2016; and Annexure II in Response to Rajya Sabha Unstarred Question No. 1106 for 26.07.2018 regarding “Cases registered under POCSO Act”, by Shrimati Jharna Das.

In addition to the NCRB data, recently, a set of statistics reflecting an alarmingly high registration of FIRs only in cases of child rape within the first six months of 2019 was made available in public domain. This has been a result of Supreme Court’s intervention on implementation of the POCSO Act through Suo Moto Writ Petition (Criminal) No. 1/2019 [Case

NCRB has not been producing updated crime statistics to look for an explanation or confirm any new trends

Title - Re: Alarming Rise in Number of reported Child Rape Incidents]. Such increase cannot be found through analysis of past or existing NCRB data and the NCRB has not been producing updated crime statistics to look for an explanation or confirm any new trends.

TABLE 2: COLLATED DATA LIST (BY PERCENTAGE) REGARDING CHILD RAPE CASES (01.01.2019 TO 30.06.2019)

SL	State/UT	Total FIRs	Disposed Of	Disposed Of Percentage
1	Andhra Pradesh	575	23	4
2	Arunachal Pradesh	32	0	0
3	Assam	904	23	3
4	Bihar	734	14	2
5	Chhattisgarh	1285	133	10
6	Goa	13	0	0
7	Gujarat	1124	3	0
8	Haryana	636	22	3
9	Himachal Pradesh	101	0	0
10	Jammu & Kashmir	50	0	0
11	Jharkhand	558	37	7
12	Karnataka	1133	5	0
13	Kerala	1012	1	0
14	Madhya Pradesh	2389	247	10
15	Maharashtra	1940	24	1
16	Manipur	53	0	0
17	Meghalaya	171	1	1
18	Mizoram	69	0	0
19	Nagaland	9	0	0
20	Odisha	1005	7	1
21	Punjab	347	25	7
22	Rajasthan	1992	82	4
23	Sikkim	26	0	0
24	Tamil Nadu	1043	22	2
25	Telangana	928	2	0
26	Tripura	76	3	4
27	Uttar Pradesh	3457	115	3
28	Uttarakhand	164	9	5
29	West Bengal	1551	99	6
	TOTAL STATE(S)	23377	897	4
30	A & N Islands	14	0	0
31	Chandigarh	29	12	41
32	D&N Haveli	36	0	0
33	Daman & Diu	NA	NA	NA
34	Delhi UT	729	2	0
35	Lakshadweep	15	0	0
36	Puducherry	12	0	0
	TOTAL UT(S)	835	14	2
	TOTAL (ALL INDIA)	24212	911	4

Source: Bar & Bench (www.barandbench.com)

The Challenge of Trend Analysis

Over the years, the use of the POCSO Act to book and try sexual crimes against children has improved. However, a combination of both, the IPC provisions and provisions of the POCSO Act, is used to register FIRs as also in framing of charges for trial by the courts, because the POCSO Act provides for punishment that is higher in degree. This poses a challenge in computing and analysing the trends. Although the NCRB has been revisiting and revising its methodology to provide a more accurate picture on the number of sexual crimes against children, in doing so it has also made any trend analysis difficult.

The NCRB has been following the 'Principle Offence Rule' since 2013 for counting of crime, which implies that "among many offences registered in a single FIR case, only the most heinous crime (maximum punishment) will be considered as counting unit."³ But the 2016 Crime in India publication states that this rule has not been followed for the chapter on crimes against children.⁴

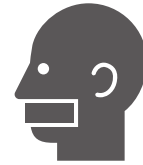
In 2016, most sexual offences against children were computed under the POCSO Act, even if cases were booked under the IPC provisions. The only exception is cases under section 377 of the IPC, which continue to be reflected under a separate category. It is not clear whether or not these are in addition to the cases of penetrative sexual assault of male children booked under the POCSO Act. This confusion continues even in 2017 data. In fact, in 2017, the Crime in India report produces a set of new and confusing statistics. It contains data for certain new categories of sexual offences that never used to be provided earlier, such as 'Attempt to commit rape', 'Murder with rape/POCSO' and 'Publishing or Transmitting of material depicting children in sexually explicit act'.

Publication of more recent crime data by the NCRB and data which is based on integration of the information management systems of the courts, police and the prison authorities may help provide a better picture. However, as of now, it is difficult to draw any conclusive inference on trends in reporting of sexual crimes against children.

Since the NCRB did make gender disaggregated data available until the recently published crime statistics for 2017, it is difficult to extrapolate any information or trends with respect to sexual abuse of the male child or for that matter transgender children, who do not find a place in crime statistics even now.

When the amendment to the POCSO Act was discussed in the Parliament, the government is reported to have informed the Parliament that the National Crime Records Bureau (NCRB) has initiated the process of collecting gender disaggregated data on sexual assaults against children for the first time in 2018.⁵ Ironically, the need for gender disaggregated data found recognition after six years of the gender neutral law coming into force.

Despite the POCSO Act being gender neutral, until 2016, crime statistics continued to compute and reflect cases registered under Section 377 of the IPC separately, and in that too, gender of the victims was not known. The 2017 Crime in India report clubs and reflects cases under 'Section 377 of the IPC read with the POCSO Act' as a distinct category. At the same time, it provides gender disaggregated data for cases registered under the provisions for penetrative and aggravated penetrative sexual assault (section 4 and 6) of the POCSO Act and also cases under Section 377, IPC read with the POCSO Act. Whether these categories are mutually exclusive remains a mystery.



Although the NCRB has been revisiting and revising its methodology to provide a more accurate picture on the number of sexual crimes against children, in doing so it has also made any trend analysis difficult.

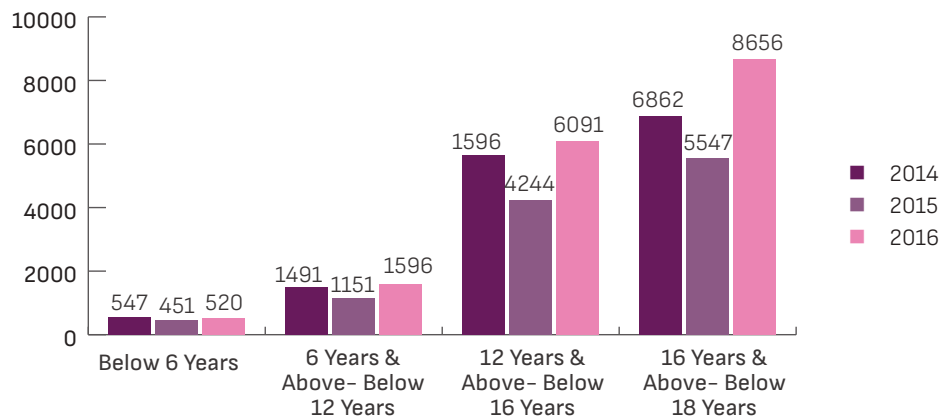


Even as the law is gender neutral, any assessment on sexual abuse of boys or transgender children is not possible.

The POCSO Act classifies certain sexual crimes against children as aggravated forms of sexual crimes on account of their age, disability, vulnerable position, abuser being in a position of trust or authority, such as care givers or schools and institutions, etc. Yet, no data is available on all such special categories of children.

The National Crime Records Bureau (NCRB) shows that between 2014-2016, a total of 1,04,976 cases were registered under the POCSO Act.⁶ A total of 16,863 girls below the age of 18 years were reported as victims of rape in 2016, as against 11,393 girls in 2015 and 14,535 in 2014. The NCRB has, for the first time, made age data available for offences under the POCSO Act in its 2017 Crime in India report, published in 2019.

FIGURE 4 AGE DISTRIBUTION OF VICTIMS OF RAPE 2014 TO 2016



Source: NCRB, Crime in India Reports, 2014 to 2016. Based on Tables for the respective Chapters on Crimes against Women.

Age distribution of all child victims/survivors and all offences under the POCSO Act is difficult to gauge. In 2016, age distribution can only be assessed from the data on victims of rape made available in the Chapter on Crimes against Women. Clearly therefore, such data is limited to the girl child. Relying on this data, it may safely be inferred that majority of minor girls who are victims of rape are in the 16 to 18 years age category and their percentage has only increased over the years.

TABLE 3: AGE DISTRIBUTION OF ALL CHILD VICTIMS/SURVIVORS OF RAPE

Age Distribution of Girl Child Victims of Rape	Below 6 Years	6 Years & Above - Below 12 Years	12 Years & Above - Below 16 Years	16 Years & Above - Below 18 Years
2014	3.8	10.3	38.8	47.2
2015	4.0	10.1	37.3	48.7
2016	3.1	9.5	36.1	51.3

Source: NCRB, Crime in India Reports, 2014 to 2016. Based on Tables for the respective Chapters on Crimes against Women.

The only time age distribution data for all child victims has been made available as part of the Chapter on Crimes against Children was in the year 2015 in Table 6.7, and now in Table 4A.9 of the 2017 Crime in India report. The 2015 data suggests 8,833 children were victims of penetrative/aggravated penetrative sexual assault that year, of whom 46.6 per cent were children aged 16 to 18 years, followed by 38.5 per cent in the 12 to 16 years' age category, 11.4 per cent aged 6 to 12 years and 3.5 per cent below the age of 6 years.

The only time age distribution data for all child victims has been made available as part of the Chapter on Crimes against Children was in the year 2015

TABLE 4: AGE-GROUP-WISE CASES & VICTIMS REPORTED UNDER SECTION 4 & 6 OF THE POCSO ACT (TOTAL)

Child victims of Penetrative/ Aggravated Penetrative Sexual Assault	Below 6 Years	6 Years & Above - Below 12 Years	12 Years & Above - Below 16 Years	16 Years & Above - Below 18 Years	Total Victims
Number of Children	306	1008	3405	4114	8833
Percentage	3.5	11.4	38.5	46.6	100

Source: NCRB, Crime in India Reports, 2015. Based on Table 6.7 for the respective chapter on Crimes Against Children

TABLE 5: AGE PROFILE OF VICTIMS OF POCSO (STATE/UT-WISE) – 2017 (TOTAL)

Child victims under POCSO	Below 6 Years	6 Years & Above - Below 12 Years	12 Years & Above - Below 16 Years	16 Years & Above - Below 18 Years	Total Victims
Number of Children	656	2164	6674	8286	17780
Percentage	3.7	12.2	37.5	46.6	100

Source: NCRB, Crime in India Reports, 2017. Based on Table 4A.9 for the respective chapter on Crimes Against Children

Age data for victims of offences under the POCSO Act, as available for 2015 and 2017, also has its limitations. Firstly, it is restricted to Sections 4 and 6 of the POCSO Act. Secondly, the 2015 age data does not provide gender disaggregated information.

The POCSO Act has always treated cases of children below the age of 12 years as special cases liable to be booked as aggravated forms of penetrative or non-penetrative sexual assault. In fact, one of the main reasons behind the criminal law amendment in 2018 was to introduce death penalty for rape of girls below the age of 12 years. Yet there is evidence of instances where the police have failed to register such cases under the appropriate provisions of law and the mistake does not get corrected even on completion of police investigation.⁷

There is no data on number of child victims with disability, nature of disposal and pendency in their cases even though the law makes special provisions for children with disabilities both in terms of treatment of offences against such children and the procedures with respect to recording their evidence and support services of special educators, translators, interpreters and experts.

Studies by the Centre for Child and the Law, National Law School of India University (CCL-NLSIU), on the Functioning of Special Courts under the POCSO Act in five states found that the majority of children with disabilities had some form of intellectual disability and/ or speech and hearing impairment.⁸

Experience of HAQ: Centre for Child Rights that provides psychosocial support and legal assistance to child victims of sexual abuse suggests that often the fact of rape in case of girls with disability comes to light when they become pregnant. Children with mental retardation and certain forms of intellectual disability do not even understand the acts of sexual violence as abuse. For those with hearing and speech impairment, sign language experts do not always bring much help as they are not familiar with the child's language of communication or, to put it the other way around, the child is not trained in formal sign language known to the experts.

A 2018 report by the Human Rights Watch, based on 17 cases of sexual violence against women and girls with disabilities, highlights the increased risks and vulnerabilities of women and girls with disability. It notes that, "Those with physical disabilities may find it more difficult to escape from violent situations due to limited mobility. Those who are deaf or hard of hearing may not be able to call for help or easily communicate abuse, or may be more vulnerable to attacks simply due to the lack of ability to hear their surroundings. Women and girls with disabilities, particularly intellectual or psychosocial disabilities, may not know that nonconsensual sexual acts are a crime and should be reported because



There is no data on number of child victims with disability, children abused in schools and institutions and such other specific categories covered under law

of the lack of accessible information.”⁹ It further states that, “survivors still face significant barriers obtaining justice and critical support services because legal and other reforms have not been fully realized.”¹⁰ The report reiterates the need for disaggregated data in terms of disability as highlighted by Rashida Manjoo, the United Nations Special Rapporteur on violence against women, in her report in 2014.¹¹

INVISIBLE VICTIMS OF SEXUAL VIOLENCE: ACCESS TO JUSTICE FOR WOMEN AND GIRLS WITH DISABILITIES IN INDIA

Highlights from the Human Rights Watch Report...

Access to “:specific need-based support from the police and judiciary” starts with the “lack of documentation in police reports” and attention to the victim/survivor’s disability.

Lack of proof of disability or “absence of government certification of disability” makes it difficult for agencies to record the fact of disability and ensure access to necessary assistance and services while navigating through the legal procedures and thereafter.

The trauma gets multiplied when medical professionals fail “to adequately explain medical tests and procedures and ensure that women and girls with disabilities are comfortable with the process”.

Women and girls with disabilities and their families are not aware of their legal rights, which affects their right to fair hearing as well as the outcome of the case.

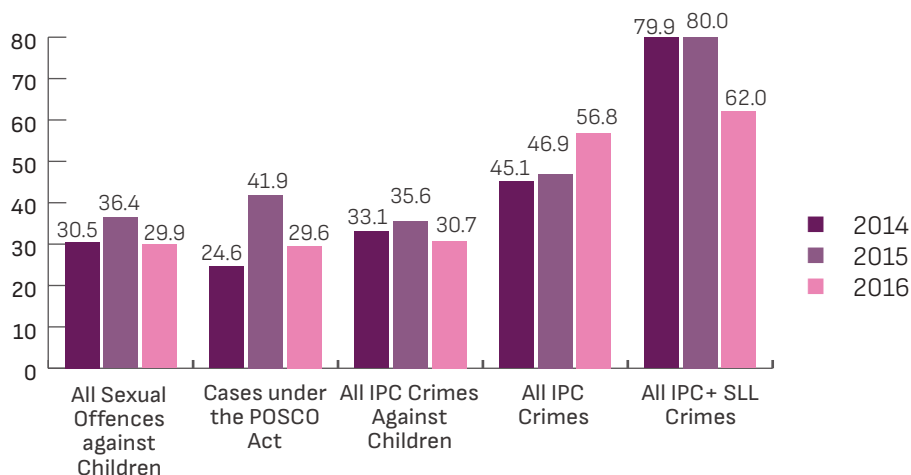
Securing compensation is difficult “even in cases of extreme violence, trauma and economic hardship resulting from childbirth”.

Conviction and Pendency

While a decline in number of cases under the POCSO Act is visible between 2014 and 2017, it can neither be attributed to the 2019 amendments in the POCSO Act or the 2018 amendments in the criminal law that were brought about as a deterrent measure, nor to any improvement in implementation of the law as the rate of conviction and pendency in courts remains high. Conviction and pendency data for 2017 is incomparable and hence shown separately. Conviction rates went down in 2016, as compared to 2014 and 2015 and pendency went up.

It is disheartening to note that the conviction rate for all IPC Crimes (56.8 per cent in 2016) is higher and much better than the conviction rate for IPC crimes against children (30.7 per cent in 2016). The

FIGURE 5 CONVICTION RATE (IN PER CENT)



Source: NCRB, Crime in India 2014, 2015 and 2016.

conviction rate for sexual offences against children under the POCSO Act is the lowest (29.6 per cent in 2016), except in the year 2015 (41.9%), which has no logical explanation besides a substantially higher number of cases being registered and tried under the POCSO Act in 2015.

TABLE 6: COURT PENDENCY IN OFFENCES AGAINST CHILDREN

Year	Court Pendency (in per cent)			
	All Sexual Offences against Children	Offences under POCSO Act	IPC Crimes against Children	All IPC Crimes
2014	87.2	95.1	87.3	84.8
2015	86.9	90.2	88.2	85.8
2016	89.0	89.0	91.7	87.4

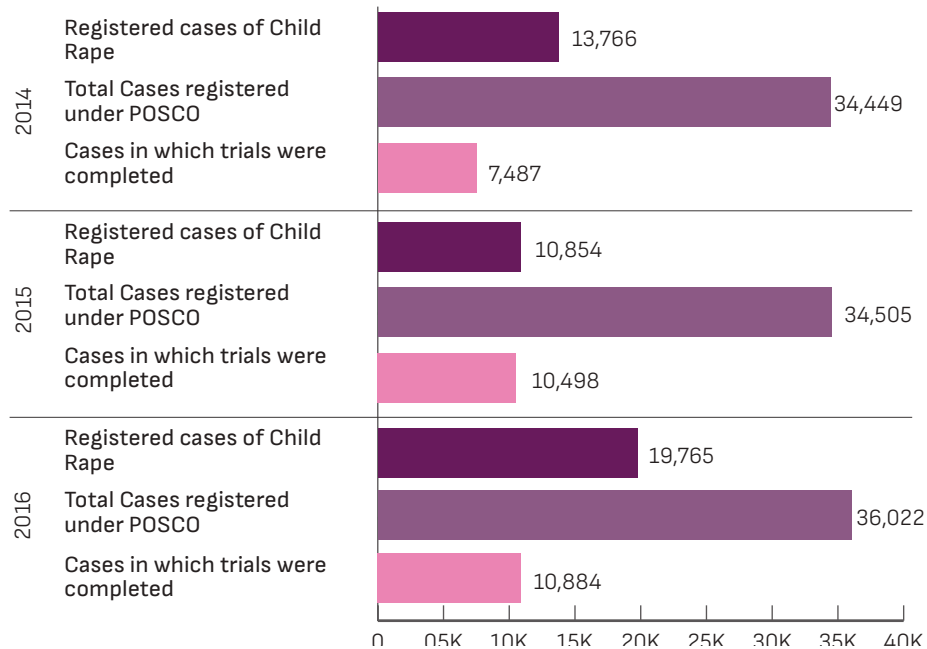
TABLE 7: COURT PENDENCY IN OFFENCES UNDER POCSO-ACT

Nature of Offence	Offences under POCSO Act - Court Pendency (in per cent)		
	2014	2015	2016
Section 4 & 6	94.8	91.1	89.6
Section 8 & 10	96.7	90.4	87.9
Section 14 & 15	100.0	81.8	93.9
Others	93.3	86.0	89.0
Total	95.1	90.2	89.0

Source: NCRB, Crime in India – 2014, 2015 and 2016.

Despite provision for creation of exclusive Special Courts to deal with offences under the POCSO Act, pendency is significantly high. Although courts do not seem to be discriminating when it comes to pendency by nature of offence, the pendency percentage for certain types of offences is also high and worrisome.

FIGURE 6 CASES REGISTERED UNDER POSCO & TRIAL COMPLETED



Source: Dubbudu, Rakesh. 24 April 2018, More Than 90% of Cases Registered Under POCSO Act Remain Pending, The Quint. <https://www.thequint.com/news/india/pendency-of-close-to-90-in-cases-registered-under-pocso>

TABLE 8: RATE OF CONVICTION AND PENDENCY PERCENTAGE FOR VARIOUS SEXUAL OFFENCES AGAINST CHILDREN IN 2017 (IN PER CENT)

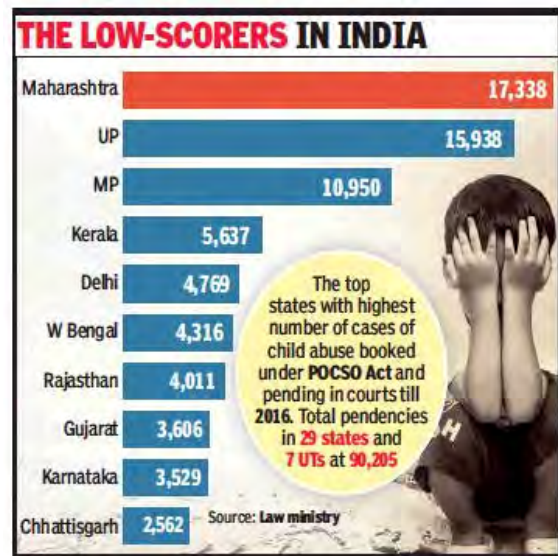
Conviction and Pendency	Murder with Rape/POCSO	Rape	Attempt to commit Rape	Assault on Women with Intent to Outrage her Modesty	Insult to the Modesty of Women	POCSO Act Total	Section 4 & 6 of POCSO Act or POCSO Act (Section 4 & 6) r/w Section 376 IPC	Section 8 & 10 of POCSO Act or POCSO Act (Section 8 & 10) r/w Section 354 IPC	Section 12 of POCSO Act or POCSO Act	Section 14 & 15 of POCSO Act	POCSO Act r/w Section 377 IPC	Sections 17 to 22 of POCSO Act	Publishing or Transmitting of material depicting children in sexually explicit act	Total Crimes against Children
Conviction Rate	85.7	34.2	36.6	40.9	44.4	33.2	32.2	36.1	27.3	25.5	43.3	15.8	-	35.5
Pendency Percentage	95.1	82.1	90.7	79.7	86.7	90.1	90.1	89.4	88.3	90.8	92.7	95.3	100.0	89.4

Source: NCRB, Crime in India, 2017. Based on Tables 4A.5 and 4A.6.

The Act mandates for a speedy trial but the NCRB data shows that by the end of 2016, 89 per cent (90,205 out of 1,01,326 cases that went for trial under the POCSO Act) cases were pending in the Special Courts in 29 states and 7 Union Territories. A 2018 news report points out a significant jump in cases pending trial across the country within a year from 27,558 cases in 2015 to 90,205 in 2016 (227 per cent).¹² It further highlights the need for efficient monitoring mechanisms to ensure time bound completion of trials given that several measures have been put in place in the form of 459 special public prosecutors, 729 special juvenile police units and 597 special children courts in 681 districts.

Recent research by the Centre for Child and the Law, National Law School of India University (CCL-NLSUI) covering 5 states¹³ and research by HAQ: Centre for Child Rights and Forum Against Child Sexual Exploitation (FACSE)¹⁴ covering Delhi and Mumbai suggest the following reasons for high pendency under the POCSO Act:

1. Special Courts under the POCSO Act hold multiple charges and are not exclusive. This adds to the caseload and burden of the courts that are meant to be "Special".
2. Courts are burdened with cases of romantic relationship as the POCSO Act has increased the age of sexual consent and made reporting mandatory. In cases of romantic relationships families of girls often insist on registration of an FIR.



Accused were known to the victims in 94.6% rape cases in 2016, 95.5% in 2015 and 86.0% in 2014.

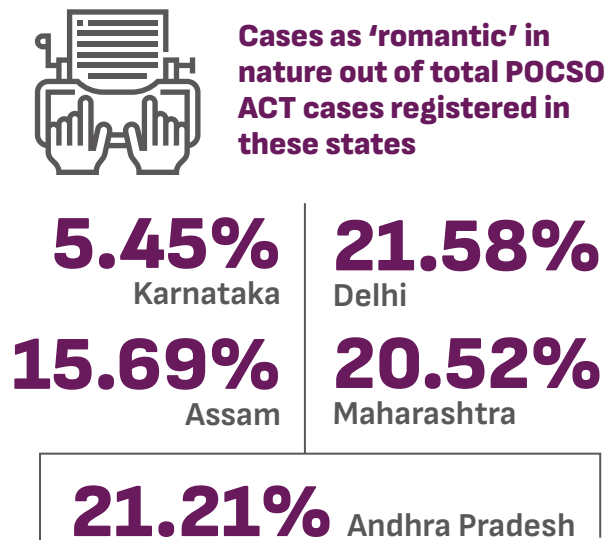
Cases of "Romantic Relationships" seldom get documented and computed as such.

Specific data on cases of romantic relationships treated as sexual offences against minors can be culled out from judgements and orders of POCSO Courts, but the E-courts portal does not include POCSO Act cases on grounds of protecting the privacy and confidentiality of victims

Out of 38,947 rape cases (adult women and minor girls) registered in the country in 2016, the accused were known to the victims in 36,859 (94.6 per cent) cases. The corresponding figure for 2015 and 2014 was 95.5 per cent and 86.0 per cent respectively.

Cases of “Romantic Relationships” seldom get documented and computed as such. The fate of the victims and the accused in such cases is definitely a great cause for concern in the wake of the law becoming more stringent and reporting being mandatory. Repeated sexual intercourse is booked and tried as an aggravated form of penetrative sexual assault, where minimum punishment is imprisonment for 20 years and maximum could be life imprisonment for the remaining period of a person’s natural life or death. In cases of romantic relationships where girls are below the age of 16 years, even one-time sexual intercourse is liable to a minimum punishment of 20 years, going up to the remaining period of the accused’s natural life.

State level studies by CCL-NLSIU, based on analysis of judgements, show that 5.45 per cent of the cases in Karnataka, 21.58 per cent in Delhi, 15.69 per cent in Assam, 20.52 per cent in Maharashtra and 21.21 per cent Andhra Pradesh were ‘romantic’ in nature.¹⁵ Specific data on cases of romantic relationships that get treated as sexual offences against minors can only be pulled out from judgements and orders of POCSO Courts as Crime in India statistics of the NCRB do not provide such information. This too has become difficult as the E-courts portal does not include orders and judgements relating to the POCSO Act on grounds of protecting the privacy and confidentiality of victims.



Interestingly, of all the girls kidnapped for marriage, those in the 16-18 years’ age group form the largest chunk – 66.0 per cent in 2014, 60.7 per cent in 2015 and 61.9 per cent in 2016.

Also, 23 per cent of all rapes in 2015 were a result of promise of marriage. In 2016, such cases constituted 27 per cent of all rapes.

Courts often find it difficult to deal with cases of romantic relationship if the victim and the accused are married and may even have a child, or the girl is pregnant, especially in the wake of the special courts losing their discretion on quantum of punishment. The provisions dealing with penetrative and aggravated sexual assault under the POCSO Act are strict liability provisions and the presumption of guilt is against the accused. As a result, any such sexual activity with a minor is a statutory offence, and consent and discretion of the victim holds no value. Women’s rights activists and lawyers like Flavia Agnes are of the view that all arguments against lowering the age of consent on the grounds that it will encourage child marriage is “totally disregarding the sociological trend that the age of marriage for females increases only when the standard of living is raised, and when public spaces are safe for them to pursue their education.”¹⁶

While disposing one such case, a Special Court judge in Delhi held, “Of course WE, the so called mature people, (who have made this country highly volatile) speak from experience that teens should not do this or should not do that.¹⁷ Yet the teens/adolescent takes such risks at enormous personal costs. It is an insurmountable task to stop them from experimenting with such kind of relationship. Above all, the Justice System works in a way that is plainly unjust, inhuman and insensitive.” Legally, the judge took the view that “sexual intercourse with a child is punishable u/s 4 of the POCSO Act provided it is in the nature of an ‘assault’”. In the absence of the definition of the word “assault” in

Special Court judges struggle to interpret the law in a manner that can prevent criminalization of romantic relationships

the POCSO Act and “criminal force” that is required to make out a case of assault, he relied on the definitions provided in the IPC to conclude that since the girl’s testimony does not suggest that she was subjected to use of to any kind of cruelty, fear, coercion, undue influence, intimidation or exploitation in any manner. In another similar case, while recognising the need to spread awareness “about the impact of girl or boy marrying at a tender age or indulging in unsafe sexual activities”, the same judge held that strict interpretation of the law “would mean that the human body of every individual under 18 years of age is the property of State”.¹⁸ In both these cases the accused was acquitted, but the situation has changed since the Supreme Court’s decision in 2017 in the case titled “Independent Thought vs. Union of India [Writ Petition (Civil) No. 382 of 2013]”, which suggests that even if a child marriage remains a valid marriage unless annulled by either parties, sexual intercourse with a minor wife would attract the provisions of the POCSO Act.

Unable to deal with such cases, Special Court judges struggle to interpret the law in a manner that does not criminalise cases of romantic relationship and the accused can be acquitted. Hearing an appeal, the High Court of Delhi in a recent judgement noted that the victim had misrepresented her age to the respondent-accused and hence the “respondent-accused had not knowingly committed any offence”. On offences under the relevant provisions in the Indian Penal Code, the Court agreed with the contention of learned Assistant Public Prosecutor (APP) for State “that the prosecutrix was a minor on the date of the incident, yet the element of *mens rea*, which is an essential ingredient of Sections 363/366/376 IPC is missing.”

Recognising that such cases clog the criminal justice system resulting in delay in justice in all the other cases of minor victims, the Madras High Court in “Sabari @ Sabarinathan @ Sabarivasan vs. The Inspector of Police and Others [Criminal Appeal No.490 of 2018] recommended that “Any consensual sex after the age of 16 or bodily contact or allied acts can be excluded from the rigorous provisions of the POCSO Act and such sexual assault... The Act can be amended to the effect that the age of the offender ought not to be more than five years or so than the consensual victim girl of 16 years or more. So that the impressionable age of the victim girl cannot be taken advantage of by a person who is much older and crossed the age of presumable infatuation or innocence.”

Increasing pendency, multiple charges held by Special Courts and resulting caseload has received attention from the Supreme Court recently in “Re: Alarming Rise in Number of reported Child Rape Incidents [Suo Moto Writ Petition (Criminal) No. 1/2019].”¹⁹

Victim Compensation – A setback to relief measures

There is a lot of confusion regarding victim compensation under the POCSO Act. The law requires an application to be filed before the Special Court for both immediate relief and final compensation, and the Special Courts can also take suo moto cognizance of the matter. However, different states have their own victim compensation schemes. The basis of these schemes lies in Section 357A of the Code of Criminal procedure (CrPC), which was inserted by way of a criminal law amendment in 2009, casting a responsibility on the State Governments to formulate Schemes for compensation to the victims of crime in coordination with the Central Government. Prior to this, victim compensation was not mandatory in nature and under Section 357 of the Code of Criminal procedure (CrPC), only the offender could be directed to pay compensation to the victim if convicted. Under the new Section 357A, victim compensation can be awarded irrespective of conviction or acquittal if fact of abuse exists and the onus has been put on the District Legal Services Authority or State Legal Services Authority to pay

Decline in the number of cases under the POCSO Act between 2014 and 2017, can neither be attributed to the deterrent measures introduced through the 2019 amendments in the POCSO Act and the 2018 amendments in the criminal law, nor to any improvement in implementation of the law as the rate of conviction and pendency in courts remains high.

victim compensation, including determining the quantum of compensation in each case. Since then, there have been judgements on expediting payment of compensation, both interim and final, but no uniformity in the amount of compensation paid for the same offence by different states.

To deal with this lack of uniformity in victim compensation, in 2015, the central government introduces the Central Victim Compensation Fund Scheme, with a corpus of INR 200 Crore, under which states can claim reimbursement for the amount of victim compensation paid by them, provided the state schemes are in line with the centre's scheme.²⁰ Most states find this a tedious process and they need funds for the initial spending rather than reimbursement of funds.

Meanwhile, in October 2017, the Supreme Court took cognizance of the discrepancies in the victim compensation schemes of different states and UTs while hearing Writ Petition (Civil) No. 565/2012 titled *Nipun Saxena Vs. Union of India*²¹, and directed the National legal Services Authority (NALSA) to "prepare Model Rules for Victim Compensation for sexual offences and acid attacks". What emerged was a chapter titled, "Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes", to be inserted into the Home Ministry's Central Victim Compensation Fund Scheme. This scheme excluded victim compensation under the POCSO Act since the POCSO Act lays down its own procedure and process for compensating minor victims of sexual abuse. Recognising absence of guidelines for victim compensation under the POCSO Act and Rules, the Supreme Court held that until the POCSO Act and Rules are amended, "the NALSA' Compensation Scheme should function as a guideline to the Special Court for the award of compensation to victims of child sexual abuse under Rule 7 until the Rules are finalized by the Central Government", and "the legislation is gender neutral and, therefore, the Guidelines will be applicable to all children."²² The scheme and guidelines became operational since October 2, 2018.

Since the central government's scheme/fund was created under the Nirbhaya Fund set up after the gang rape of a young physiotherapist in December 2012. As such the scheme/fund is limited to girls. While the Supreme Court's order in Writ Petition (Civil) 565 of 2012 dated 05.09.2018 extends the NALSA scheme/guidelines to boys, in May 2018, the then Union Minister of Women and Child Development had written a letter to all states and union territories urging them "to take necessary steps for including male child victims of sexual abuse in the 'Victim Compensation Scheme/Fund."²³



Source: Singh, Vijaita and Chandra, Jagriti. July 14, 2019. Sexual offence cases not being probed in stipulated time: Report. The Hindu. <https://www.thehindu.com/news/national/sexual-offence-cases-not-being-probed-in-stipulated-time-report/article28429991.ece>

While death penalty is introduced for sexual offences resulting in death of the child or penetrative sexual assault coupled with murder, the provisions of victims compensation under the POCSO Act fail to address compensation for deceased victims, those covered under Section 5 (j) (iv) or those who are raped and murdered, or for some reason die in the course of trial. This is because the definition of 'child' in the POCSO Act refers to a living child and the term 'victim' is not defined under the POCSO Act or Rules to cover deceased children.

POCSO Act fails to address victim compensation for deceased victims even though death of an abused child resulting from sexual abuse can result in death penalty

Despite all the efforts, getting victim compensation, especially in cases under the POCSO Act is not easy. The 5-state study by CCL-NLSIU suggests that compensation was ordered only in 22.09% cases in Assam, 9.39% cases in Maharashtra, 5.39% cases in Delhi, 3.35% cases in Andhra Pradesh, and 3.63% cases in Karnataka (three districts).²⁴ The HAQ and FACSE study on implementation of the POCSO Act in Delhi and Mumbai shows that information on victim compensation could be gathered from only 7 of the 79 disposed cases that ended in conviction, while no compensation was given by the Special Courts that resulted in acquittal. Of these 7 cases, victim compensation was given under the POCSO Act only in one case, and in others it was either as part of the fine imposed under section 357 (1) (b) of CrPC or an order for compensation to be paid by the offender under Section 357 (3) of CrPC. The situation in Mumbai was similar, though somewhat better in as much as compensation was awarded in all the 8 cases that ended in conviction in the three courts between 2013 and July 2015.²⁵

The CCL-NLSIU studies and HAQ's experience while representing children in the Special Courts suggests that interim compensation does not come through until the child has testified against the accused and final compensation is not even considered if a case ends in acquittal or the accused remains absconding. The only exception to this seems to be Tamil Nadu.²⁶ When a seven-year-old male child victim of sexual assault by his uncle turned hostile resulting in acquittal, a Special Court in Mumbai asked the child's mother to repay the interim compensation of INR 1 lakh within two months with interest @10 per cent per annum.²⁷

Interim compensation does not come through until the child has testified against the accused and final compensation is not even considered if a case ends in acquittal or the accused remains absconding

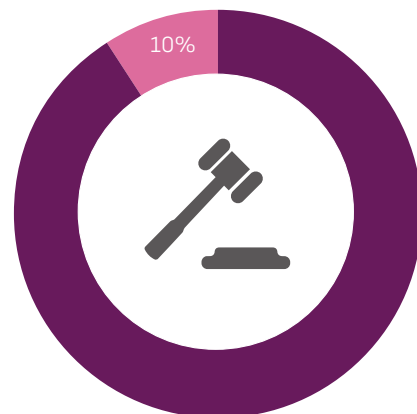
It must be mentioned that victim compensation as part of fines imposed makes no sense as most offenders come from poor economic background and are unable to pay the amount. Even if compensation orders are passed, receiving the amount is a hurdle in the absence of residence proof and such other documents required to open a victim's bank account, as also due to lack of funds and a lack of will. Since cases are subject to appeals, this may further delay or deny victim compensation.²⁸

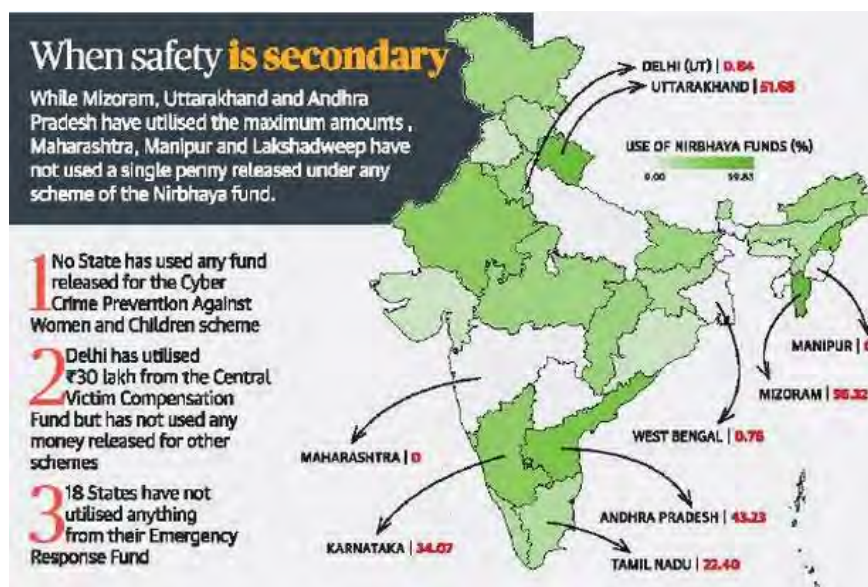
As per the report filed by NALSA in Writ Petition (Civil) No. 565 of 2012, victim compensation was provided in 5 to 10 per cent of cases of rape and other types of sexual assault. The data shared by NALSA stated that out of 1,028 cases registered in Andhra Pradesh in 2017 under the POCSO Act, only 11 victims got compensation, while in Rajasthan, 3,305 FIRs were registered that year and only 140 victims received compensation, and in Bihar, as against 1,199 FIRs of sexual assaults only 82 victims were compensated.²⁹

In Tamil Nadu, RTI data from 11 districts indicates that between November 2012 and September 2018, victim compensation in cases under the POCSO Act was received only in 47 cases.³⁰ These have been when the victim or someone on their behalf has filed for compensation, when the special court had on its own recommended the award of compensation, when the accused had not been identified or when the case ended in acquittal or discharge.³¹

A news report looking into the Nirbhaya funds sanctioned and spent by the states and UTs for various schemes suggests that "As many 21 States have not used any money under the Central Victim Compensation Fund for providing support to victims of rape, acid attacks, human trafficking and women killed or injured in cross border firing; ₹200 crore was allocated to 36 States and UTs for the programme with the aim to supplement State governments' funds as well as to reduce disparity in quantum of compensation."³²

Cases in which compensation received w.r.t total number of cases of rape and other sexual assaults





One Stop Centres (OSCs) and Witness Protection Measures

Among the various positive measures taken in the last decade are the decision of the Ministry of Women and Child Development in 2015 to set up One Stop Centres in a phased manner and the finalisation and approval of a national Witness Protection Scheme. As with all laws, policies, programmes and schemes, unfortunately, even these positive developments are rendered meaningless due to poor implementation.

The reported number of One Stop Centres (OSCs) approved, number of Functional OSCs and number of women supported under One Stop Centre Scheme can be gauged from the table below.³³

TABLE 9: STATE/UT WISE DATA ON ONE STOP CENTRES (OSCS)

Sl. No.	State/ UTs	Total Approved OSCs	Number of Functional OSCs	Offered support to women
1	Andaman & Nicobar Islands	3	1	472
2	Andhra Pradesh	13	13	26,884
3	Arunachal Pradesh	21	2	308
4	Assam	33	5	720
5	Bihar	38	8	3,755
6	Chandigarh	1	1	326
7	Chhattisgarh	27	27	10,868
8	Dadra & Nagar Haveli	1	1	40
9	Daman & Diu	2	1	25
10	Goa	2	1	977
11	Gujarat	23	10	894
12	Haryana	22	7	3,878
13	Himachal Pradesh	12	1	68
14	Jammu & Kashmir	22	2	63
15	Jharkhand	24	3	319
16	Karnataka	30	7	517
17	Kerala	14	4	393
18	Madhya Pradesh	51	50	3,217
19	Maharashtra	36	11	1,504

Sl. No.	State/ UTs	Total Approved OSCs	Number of Functional OSCs	Offered support to women
20	Manipur	16	1	10
21	Meghalaya	11	2	981
22	Mizoram	9	1	65
23	Nagaland	11	2	103
24	Odisha	30	4	857
25	Puducherry	1	1	51
26	Punjab	22	7	293
27	Rajasthan	16	16	4,964
28	Sikkim	4	1	115
29	Tamil Nadu	32	6	197
30	Telangana	31	9	7807
31	Tripura	8	1	30
32	Uttar Pradesh	75	24	1,18,833
33	Uttarakhand	13	4	993
34	Lakshadweep	0	0	0
35	NCT of Delhi	0	0	0
36	West Bengal	0	0	0
	Total	654	234	1,90,527

The idea of OSCs is to facilitate access to various services for victims of sexual violence in one place in order to minimise re-victimisation or add to a victim's trauma. However, only 234 OSCs are functional out of the 654 approved for the country.

As regards witness protection, Delhi is the first and the only state to have a witness protection scheme and a Vulnerable Witness Deposition Complex (VWDC) in every District Court in order to help the witnesses depose without fear or discomfort. The issue of witnesses turning hostile and need for witness protection that would help witnesses testify without fear and discomfort has come up time and again in various cases before the Supreme Court of India. The one that finally resulted in a direction from the Supreme Court is *Mahender Chawla & Ors. Vs. Union of India & Ord.* [Writ Petition (Crl.) No. 156 of 2016].³⁴

Various reports of the Law Commission³⁵ too had recognised and voiced the need for witness protection, though pre-trial and post-trial protection had not received much attention until December 2018, when a national Witness Protection Scheme was finalised by the National Legal Services Authority (NALSA) and the Bureau of Police Research Development (BPR&D) and approved by the Supreme Court with a direction for the States and UTs to implement the scheme with immediate effect and set up VWDCs by the end of 2019.³⁶

Besides setting up specially designed court rooms/complexes and expediting the depositions of vulnerable witnesses, the scheme provides for police escort to the witnesses and their family members facing threats, relocation to a safe house based on a Threat Analysis Report (TAR) from ACP/DSP and financial aid for sustenance, installation of CCTV cameras and such other security devices at the residence of witnesses, monitoring of the social media accounts, emails and phone calls of the witnesses, and other protection measures such as change of phone number or even identity, if required.³⁷

Only 234 OSCs are functional out of the 654 approved for the country

There is no consolidated report on the status of implementation of the witness protection scheme in the states and UTs



PROVISIONS UNDER THE WITNESS PROTECTION SCHEME, 2018

- | | |
|--|--|
| » Ensuring that witness and accused do not come face-to-face during investigation or trial | » Concealment of identity of witness by referring to him with the changed name/ alphabet |
| » Monitoring of mail and telephone calls | » Close protection, regular patrolling around witness's house |
| » Change witness's telephone number or assign him an Y unlisted number | » Escort to and from court |
| » Installation of security devices in witness's home such as security doors, CCTV, alarms, fencing etc | » Holding in-camera trials |

Source: Choudhary, Amit Anand. 6 December 2018, Supreme Court OKs 24x7 witness protection scheme. TNN, Available at: <https://timesofindia.indiatimes.com/india/supreme-court-oks-witness-protection-plan/articleshow/66961866.cms>

There is no consolidated report on the status of implementation of the witness protection scheme in the states and UTs. A newspaper report suggests, “But for its capital Chandigarh, Haryana is yet to implement the witness protection scheme despite the Supreme Court directions.”³⁸ The Odisha government is reported to have come out with its own scheme on the lines of the national scheme, but whether any witness has been able to benefit from it is not yet known.³⁹ Meanwhile, given the little faith that people have in the police and the fact that no ACP/DSP will carry out a threat analysis him/herself, it may be worthwhile to bring in the role of social welfare agencies/child rights organisations or support persons assigned to children as per Rule 4(9) of the POCSO Rules in the threat analysis reports.

Most Pressing Concerns

Most concerns regarding child sexual abuse and the present law emanate from the provisions of mandatory reporting, stringent minimum and maximum sentences and the raising of age of consent to 18 years. Incidences like sexual abuse of 34 out of the 44 girls residing in the Muzaffarpur shelter home⁴⁰ and wide-scale sexual exploitation of girls in the Deoria shelter home⁴¹ point to the failure of mandatory reporting. Interestingly, reporting of sexual abuse in institutions run by the government is very rare, though there may be reports of children escaping from government run shelters. The NCRB does not provide data on the different settings where sexual abuse of children takes place or for that matter sexual abuse by school teachers or staff of an institution. Unlike countries where mandatory reporting procedures involve child protection agencies, in India, the first agency to report to is the police, which makes schools/institutions and agencies working with or in a school/institutional set up apprehensive about mandatory reporting. Since false reporting is also an offence and most victims turn hostile, the apprehension only multiplies. Unless a victim, and in case of minors, their parent(s)/guardian(s) are ready to report no individual or agency wants to take the plunge. Little faith in the police, delays in justice delivery, stigma and shame associated with sexual abuse only add to the problem.

One of the biggest criticisms of mandatory reporting to police is that it takes away the opportunity to seek other forms of assistance, which are more often than not the most immediate forms of relief that victims require. School awareness programmes do result in some children sharing their experiences with their teachers or facilitators of such programmes, but most children are looking for support other than registration of a police case.

Medical practitioners and psychologists too have been raising similar concerns as children and families refuse to seek medical treatment and care for fear of the case being reported to the police. In cases leading to pregnancy, medical practitioners are left with no option but to report to police as all sex under 18 years of age is treated as non-consensual and is a statutory offence liable to punishment under the POCSO Act. This at times keeps girls and their families away from seeking timely abortion. While the MTP Act requires medical practitioners to maintain confidentiality, the POCSO Act mandates them

to report all pregnancies.⁴² The worst implication of the mandatory reporting provision is in cases of child marriage and romantic relationships, where going to a doctor for a regular gynaecological check-up could also result in a police case. The 2019 amendment to the POCSO Act has introduced minimum mandatory sentence of twenty years' imprisonment if medical reports and other evidence suggest repeated or multiple times sexual intercourse with a minor, while the maximum sentence can be imprisonment for the remaining period of life of a person or death. Further, husbands in many cases of child marriage may end up finding themselves on the National Database on Sexual Offenders (NDSO) launched by the Ministry of Home Affairs on 20th September 2018,⁴³ since courts are left with no discretion but to convict them for the strict liability statutory offence made out under the POCSO Act.

EXCERPTS FROM NFHS – 4, 2015-16,

Twenty percent of women age 15-19 with no schooling have already begun childbearing, compared with only 4 percent of women who had 12 or more years of schooling. More than half (52%) of currently married women age 15-19 have already begun childbearing. Tripura (19%); West Bengal (18%); Assam (14%); and Bihar, Jharkhand, and Andhra Pradesh (12% each) have higher levels of teenage pregnancy than other states and union territories. Eleven percent of women age 25-49 had sex before age 15, and 39 percent before age 18.

Conclusion

Reporting is important, but only if there is a process to it and it instils confidence in the victims, their families and the citizenry. Many argue that reporting should be mandatory for those providing professional services to children.

The law on age of sexual consent needs to change and this requires consultation with children and young people as much as experts. Relying on stringent laws for encouraging responsible sexual behaviour while keeping age appropriate sex education away from children and young people only makes India a laughing stock. Children's exposure to sexual content through media and internet does not make them mature. Instead it renders them more vulnerable than ever before. It should not require an expert to tell this.

Data and data analytics being the backbone for making informed decisions, requires serious investment. Automated child protection data management systems should not be delayed if efficiency and quality services are a goal. Keeping judicial records away from public domain in the name of protecting privacy and confidentiality of victims does not help and the objective can be met simply by ensuring the judgements and orders do not disclose name and identity of the victim.

At the same time legal amendments, should limit themselves to corrections and improving implementation than making new and stringent laws in the name of deterrence and child protection. While amendments to the rape law in 2013 were awaited since the 1990s, the trigger was a brutal gang rape case of a 23 year old girl in the country's capital that received huge media attention. There has been no looking back thereafter and much of the recent amendments in laws relating to child protection in particular, have been reactionary - a political response to a populist demand created by media, with very little attention to evidence and children's social realities.

One grew up being told that it is not easy to amend laws, particularly criminal laws. It was probably true until some twenty years ago. The fact that child sexual abuse remains under reported, that most perpetrators are persons known to children, that a significant number of cases are of adolescents in romantic relationships and that most children turn hostile before or during the trials have been ignored or put aside. The result has been polyvictimisation of children who come in contact with the law and criminalisation of adolescents and young persons in intimate relationships. Experimenting with child rights legislation in the name of protecting the "best interest of children" is nothing short of treating children as guinea pigs for clinical trials on criminal justice law reform.

Endnotes

- 1 Supreme Court of India. (2017) 10 SCC 800. Judgement dated 11 October 2017
- 2 Bhattacharya, Pramit and Kundu, Tadit. 24 April 2018. 99% cases of sexual assaults go unreported, govt data shows, Livemint. Available at: <https://www.livemint.com/Politics/AV3sIKoEBAGZozALMX8THK/99-cases-of-sexual-assaults-go-unreported-govt-data-shows.html> Last accessed on 18.10.2019.
- 3 National Crime Records Bureau (NCRB). Crime in India Reports, 2013 –2015, Disclaimer; Crime in India, 2016, Methodology Adopted for the Present Publication; and Crime in India, 2017, Limitations and Disclaimer.
- 4 National Crime Records Bureau (NCRB), 2016, Crime in India, page xi: "As per the International Standard, the Bureau follows 'Principle Offence Rule' for counting of crime. Hence among many offences registered in a single FIR case, only most heinous crime (maximum punishment) will be considered as counting unit... i.e. Murder with Rape is accounted as Murder.. The Principle Offence Rule is not applicable for chapters of Crimes against Women, Crimes Against Children, Crimes Against SC/ST, juveniles in conflict with law, crime against senior citizens etc."
- 5 Chandra, Jagriti. July 29, 2019. Need to help boys disclose sexual abuse, say activists. The Hindu, New Delhi Edition. <https://www.thehindu.com/news/national/need-to-help-boys-disclose-sexual-abuse-say-activists/article28739509.ece> Last accessed on 01.10.2019
- 6 Rajya Sabha. July 26, 2018. Cases Registered under POCSO Act, Unstarred Question No. 1106, Session 246. <https://rajyasabha.nic.in/rsnew/Questions/ShowQn.aspx> Last accessed on 01.10.2019
Rajya Sabha. August 9, 2018. Abuse exploitation of children, Unstarred Question No. 2718, Session 246. <https://rajyasabha.nic.in/rsnew/Questions/ShowQn.aspx> Last accessed on 01.10.2019
Rajya Sabha. December 27, 2017. Convictions under POCSO Act, Unstarred Question No. 995, Session 244. <https://rajyasabha.nic.in/rsnew/Questions/ShowQn.aspx> Last accessed on 01.10.2019
- 7 Ali, Bharti et al. November 2017. Implementation of the POCSO Act: Goals, Gaps and Challenges – Study of Cases of Special Courts in Delhi & Mumbai (2012–2015), pp 102–103, HAQ: Centre for Child Rights, FACSE & UNICEF. Available at: <http://haqrc.org/publication/implementation-pocso-act/> Last accessed on 01.10.2019
- 8 CCL–NLSIU. February 2018. Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues, p. 146.
- 9 Human Rights Watch. April 2018. Invisible Victims of Sexual Violence: Access to Justice for Women and Girls with Disabilities in India, page 4.
- 10 Human Rights Watch. April 2018. Invisible Victims of Sexual Violence: Access to Justice for Women and Girls with Disabilities in India, page 5.
- 11 Human Rights Watch. April 2018. Invisible Victims of Sexual Violence: Access to Justice for Women and Girls with Disabilities in India, page 6.
- 12 Times News Network. February 14, 2018. State has most child abuse cases that are pending trial UP And MP Follow Maharashtra. The Times Of India, Pune eEdition. <https://epaper.timesgroup.com/Olive/ODN/TimesOfIndia/shared/ShowArticle.aspx?doc=TOIPU%2F2018%2F02%2F14&entity=Ar01024&sk=C4F41B02&mode=text#> Last accessed on 01.10.2019 and <https://epaper.timesgroup.com/Olive/ODN/TimesOfIndia/shared/ShowArticle.aspx?doc=TOIPU%2F2018%2F02%2F14&entity=Ar01024&sk=C4F41B02&mode=text> Last accessed on 01.10.2019
- 13 CCL–NLSIU. 2016. Study on the Working of Special Courts under the POCSO Act, 2012 in Delhi: 667 judgments from 1 January 2013 till 30 September 2015. Available at: <https://www.nls.ac.in/ccl/jjdocuments/specialcourtPOCSOAct2012.pdf> Last accessed on 01.10.2019
CCL–NLSIU. 2017. Study on the Working of Special Courts under the POCSO Act, 2012 in Assam: 172 judgments from January 2013 till 31 August 2016. Available at: <https://www.nls.ac.in/ccl/jjdocuments/studyspecialcourtassamPOCSOAct2012.pdf> Last accessed on 01.10.2019
CCL–NLSIU. 2017. Study on the Working of Special Courts under the POCSO Act, 2012 in Karnataka: 110 judgments from September 2013 till April 2016. Available at: <https://www.nls.ac.in/ccl/jjdocuments/posco2012karnataka.pdf> Last accessed on 01.10.2019
CCL–NLSIU. 2017. Study on the Working of Special Courts under the POCSO Act, 2012 in Maharashtra: 1330 judgments from 1 January 2013 till 31 December 2016. Available at: <https://www.nls.ac.in/ccl/jjdocuments/POSCOMaharashtrastudy.pdf> Last accessed on 01.10.2019
CCL–NLSIU. 2017. Study on the Working of Special Courts under the POCSO Act, 2012 in Andhra Pradesh: 509 judgments from 1 January 2013 till 30th June 2017. Available at: <https://www.nls.ac.in/ccl/POSCOAP2017study.pdf> Last accessed on 01.10.2019
- 14 Ali, Bharti et al. November 2017. Implementation of the POCSO Act: Goals, Gaps and Challenges – Study of Cases of Special Courts in Delhi & Mumbai (2012–2015): 1803 cases from Delhi and 154 cases from Mumbai Special Courts and 21 judgments for in–depth analysis for both cities, HAQ: Centre for Child Rights, FACSE & UNICEF. Available at: <http://haqrc.org/publication/implementation-pocso-act/> Last accessed on 01.10.2019
- 15 CCL–NLSIU. 2018. Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues, page 133.
- 16 Agnes, Flavia. 10 July 2013. Controversy over Age of Consent, Economic and Political Weekly, Vol. 48, Issue No. 29. Available at: <https://www.epw.in/journal/2013/29/commentary/controversy-over-age-consent.html> Last accessed on 01.10.2019
- 17 Court of ASJ–1, New Delhi District. Judgement dated 08.10.2013, State v. Suresh Kumar, SC No. 113/13, Patiala House Courts.
- 18 Court of ASJ–1, New Delhi District. Judgement dated 08.10.2013, State v. Suman Dass, SC No. 66/13, Patiala House Courts.
- 19 Madras High Court. Judgement dated 26 April 2019, Criminal Appeal No. 490 of 2018. Available at: <https://indiankanoon.org/doc/197077895/> Last accessed on 01.20.2019
- 20 Press Information Bureau. 14 October 2015. Central Victim Compensation Fund set up with initial corpus of Rs. 200 crores, Ministry of Home Affairs, Government of India. Available at: <https://pib.gov.in/newsite/PrintRelease.aspx?relid=128738> Last accessed on 01.10.2019

- 21 Supreme Court of India. Writ Petition (Civil) No. 565 of 2012, Order dated 12 October 2017. Available at: <https://indiankanoon.org/doc/57608821/> Last accessed on 01.10.2019
- 22 Supreme Court of India. Writ Petition (Civil) No. 565 of 2012 order dated 5 September 2018. Available at: <https://indiankanoon.org/doc/165140902/> Last accessed on 01.10.2019
- 23 Bansal, Aanchal. 30 May 2018. Maneka Gandhi urges states/UTs to include male child victims under "Victim Compensation Scheme/Fund". The Economic Times. Available at: <https://economictimes.indiatimes.com/news/politics-and-nation/maneka-gandhi-urges-states/uts-to-include-male-child-victims-under-victim-compensation-scheme/fund/article-show/64387557.cms?from=mdr> Last accessed on 01.10.2019
- 24 Raha, Swagata. February 2018. Compensation under the POCSO Act, 2012, Chapter 5, p. 74. In CCL-NLSIU Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues.
- 25 Ali, Bharti et al. November 2017. Implementation of the POCSO Act: Goals, Gaps and Challenges – Study of Cases of Special Courts in Delhi & Mumbai (2012–2015), pp 115–118, HAQ: Centre for Child Rights, FACSE & UNICEF. Available at: <http://haqrcr.org/publication/implementation-pocso-act/> Last accessed on 01.10.2019
- 26 Poorvaja, S. 20 November 2018. On compensation for POCSO cases, reality at odds with rules. The Hindu, Chennai Edition. Available at: <https://www.thehindu.com/news/cities/chennai/on-compensation-for-pocso-cases-reality-at-odds-with-rules/article25542071.ece> Last accessed on 01.10.2019
- 27 Samervel, Rebecca. 8 December 2018. POCSO court to mother of 'victim': Repay payout with 10% interest. Times News Network. Available at: <https://timesofindia.indiatimes.com/city/mumbai/pocso-court-to-mom-of-victim-repay-payout-with-10-interest/articleshow/66994279.cms> Last accessed on 01.10.2019
- 28 Raha, Swagata. February 2018. Compensation under the POCSO Act, 2012, Chapter 5, pp 74–80. In CCL-NLSIU Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues.
- 29 Press Trust of India. 8 May 2018. 5–10 per cent sexual assault victims get compensation. Available at: <https://www.thehindubusinessline.com/news/5-10-per-cent-sexual-assault-victims-get-compensation/article23814564.ece> Last accessed on 01.10.2019
- 30 Poorvaja, S. 20 November 2018. On compensation for POCSO cases, reality at odds with rules. The Hindu, Chennai Edition. Available at: <https://www.thehindu.com/news/cities/chennai/on-compensation-for-pocso-cases-reality-at-odds-with-rules/article25542071.ece> Last accessed on 01.10.2019
- 31 Poorvaja, S. 20 November 2018. On compensation for POCSO cases, reality at odds with rules. The Hindu, Chennai Edition. Available at: <https://www.thehindu.com/news/cities/chennai/on-compensation-for-pocso-cases-reality-at-odds-with-rules/article25542071.ece> Last accessed on 01.10.2019
- 32 Chandra, Jagriti and Sen, Sumant. 29 June 2019. Only 20% of Nirbhaya Fund has been used by States until 2018. The Hindu, Updated on 30 June 2019. Available at: <https://www.thehindu.com/news/national/only-20-of-nirbhaya-fund-has-been-used-by-states-until-2018/article28230097.ece> Last accessed on 01.10.2019
- 33 Rajya Sabha. 13 December 2018. One Stop Centre, Annexure 1, Unstarred Question No. 480, Session 247. Available at: <http://164.100.475/qsearch/QResult.aspx> Last accessed on 01.10.2019
- 34 Supreme Court of India. Writ Petition (Criminal) No. 156 of 2016, Judgement dated 5 December 2018. Available at: https://sci.gov.in/supremecourt/2016/34388/34388_2016_Judgement_05-Dec-2018.pdf Last accessed on 01.10.2019
- 35 "In 1958, the 14th Report of Law Commission indicated about the need to protect witnesses. The 4th Report of the National Police Commission, 1980 also dealt with the said subject. In 154th Report (1996) The Law Commission dealt with the plight of the witnesses. The report spelt out the inconvenience and the lack of facilities and the threat from the accused to the witnesses. The 172 and 178th report also dealt with the said subject and recommended that witnesses should be protected from the wrath of the accused in any eventuality. The Hon'ble Supreme Court also repeatedly observed about the importance to give protection to witnesses." Quoted from: Bureau of Police Research and Development (BPR&D). 2019. Witness Protection Scheme: The New Paradigm, 2018. Ministry of Home Affairs, Government of India. <http://bprd.nic.in/WriteReadData/CMS/Witness%20Protection%20Scheme-2018.pdf> Last accessed on 01.10.2019
- 36 Supreme Court of India. Writ Petition (Criminal) No. 156 of 2016, Judgement dated 5 December 2018. Available at: https://sci.gov.in/supremecourt/2016/34388/34388_2016_Judgement_05-Dec-2018.pdf Last accessed on 01.10.2019
- 37 Bureau of Police Research and Development (BPR&D). 2018. Witness Protection Scheme: The New Paradigm, Ministry of Home Affairs. Available at: <http://bprd.nic.in/WriteReadData/CMS/Witness%20Protection%20Scheme-2018.pdf> Last accessed on 01.10.2019
- 38 Sharma, Neha. September 28, 2019. Haryana yet to implement witness protection scheme. Times News Network. <https://timesofindia.indiatimes.com/city/gurgaon/haryana-yet-to-implement-witness-protection-scheme/articleshow/71343356.cms> Last accessed on 01.10.2019
- 39 The Pioneer. 11 July 2019. State introduces Witness Protection Scheme. Available at: <https://www.dailypioneer.com/2019/state-editions/state-introduces-witness-protection-scheme.html>. Last accessed on 01.10.2019
- 40 Singh, Santosh and Dwivedi, Johri Ankita. 5 August 2018. Muzaffarpur shelter home case: Brajesh Thakur- under his care 34 girls were 'sexually assaulted'. The Indian Express. Available at: <https://indianexpress.com/article/india/bihar-muzaffarpur-shelter-home-case-bihar-scandal-brajesh-thakur-paratah-kamal-sexual-abuse-under-his-care-5292021/> Last accessed on 01.10.2019
- 41 Chakraborty, Pathikrit. Updated August 30, 2019. UP: CBI takes up Deoria shelter home case. Times News Network. <https://timesofindia.indiatimes.com/city/lucknow/up-cbi-takes-up-deoria-shelter-home-case/articleshow/70907669.cms> Last accessed on 01.10.2019
- 42 Cehat and Lawyers Collective. Joint Submissions on the MoWCD National Child Protection Policy, 2019. Available at: <https://www.lawyerscollective.org/wp-content/uploads/2017/07/joint-Submission-to-MoWCD.pdf> Last accessed on 01.10.2019
- 43 Rajya Sabha. 2 January 2019. National Database on Sexual Offenders (NDSO), Unstarred Question No. 2314, Session 247. Available at: <http://164.100.475/qsearch/QResult.aspx> Last accessed on 01.10.2019

12

CHILDREN IN CONFLICT WITH THE LAW

SHRUTHI RAMAKRISHNAN
& SWAGATA RAHA



Introduction

India's juvenile justice system was radically transformed after the brutal gang-rape of a young woman on a moving bus in Delhi in December 2012. One among the alleged perpetrators was a 17-and-a-half year old boy, whose treatment under the juvenile justice system enraged many. Data on involvement of adolescents in rape and murder received widespread media attention and was used by the Ministry of Women and Child Development to justify the need for an exception to enable children above 16 years and below 18 years to be tried as adults for heinous offences.¹

This chapter examines the question - whether data on juvenile crime, among other justifications, can be the basis to curtail the rights of 16 and 17-year olds accused of heinous offence under a legislation premised on their protection.

In 2014, Ms. Maneka Gandhi, Minister for Women and Child Development stated "50 percent of all sexual crimes were committed by 16-year-olds who know the Juvenile Justice Act so they can do it."² This claim was challenged by the ProChild Network³ for being baseless and unsubstantiated as official government data indicated that children aged 16 and 17 years constituted a mere 4.1 per cent of all persons arrested for rape in 2013.⁴

The Parliamentary Standing Committee which examined the JJ Bill, 2014, closely examined the interpretation of crime data by the government and concluded that "the percentage of juvenile crimes in India *i.e.* 1.2 per cent of the total child population of the country is quite low... some incidents

"...from a societal point of view, it is important to consider what could be done to ensure the child does not come back into the system. It is therefore important to ensure that there is always a human touch and an undiluted focus on the child's interests, both of which should not be forgotten or be overtaken by the pressure to reduce numbers."

Observations of the Supreme Court Committee on Juvenile Justice, Consolidated Report: 4th Regional Round Table Consultations (2018), p.55.

of juvenile crime, though a cause of serious concern should not be the basis for introducing drastic changes in the existing juvenile justice system.”⁵ During the debate on the Bill in the Lok Sabha, Member of Parliament, Shashi Tharoor, stated:

...there are 472 million children in our country. Only 1.2 per cent of all of them have committed crimes. ...In 2013, of all the children arrested for crimes under the Indian Penal Code, 2.17 per cent were accused of murder and 3.5 per cent of rape. This is two per cent of one per cent... **How can we pass a law that will jeopardise the other 99.98 per cent children in this country because we are over-reacting or this Government wishes to over-react to these handful of cases?**⁶ (emphasis added)

Gandhi acknowledged the low figures, but stated that the transfer system would apply to a fraction of children “and majority of the children will not be affected by these provisions.”⁷ Such rationale is contrary to the spirit of fundamental rights under the Constitution of India and the Supreme Court’s emphasis that a group cannot be deprived of their fundamental rights because they constitute a “miniscule fraction.”⁸

Despite this, not only did the law change, the media fed public perception too remains the same. Since the coming into force of the new law, children have been tried as adults and this has even resulted in them being sentenced to life imprisonment in Jhabua, Madhya Pradesh⁹ and Hyderabad, Telangana.¹⁰

Trends In Offending

Rate of Juvenile Offending

The overall incidence of juvenile crime has increased by 30.1 per cent, i.e., by 7789 cases over the past 12 years (from 2006 to 2017).¹² In 2017, the total crime incidence was 50,07,044, while the juvenile crime incidence was 33,606, i.e., at a rate of 0.67 per cent of the total crime rate.¹³

In respect of absolute numbers, as is evident from the above figures, the numbers pertaining to juvenile delinquency are far lower than the total crime rate.

Table 1 tracks the incidence of juvenile crime and the number of children apprehended over a period of 12 years.¹⁴

Of 444 million children under the age of 18 years in India only 33,887 came into conflict with the law in 2011. This number has risen to a mere 40,420 in 2017.¹¹

TABLE 1: INCIDENCE OF JUVENILE CRIME: 12-YEAR PROJECTION

Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Incidence of Juvenile Crime	25,817	27,028	27,691	28,247	25,298	27,962	31,973	35,861	38,565	33,433	35,849	33606
Children Apprehended for Cognizable Offences	32,145	34,527	34,507	33,642	30,303	33,887	39,822	43,506	48,230	41,385	44,171	40420

Source: NCRB. Crime in India Report, 2006-2017.

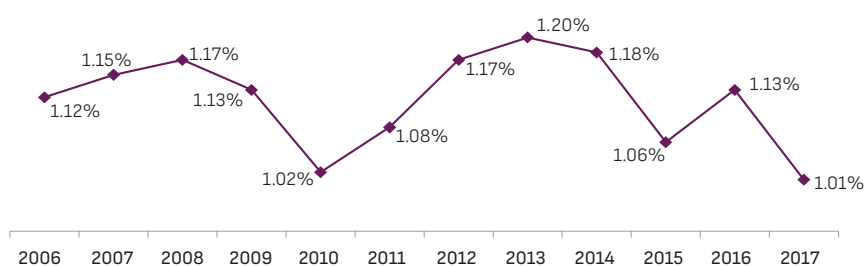
The incidence of juvenile crime and the corresponding number of children apprehended for offences shows a gradual increase from 2006-2014. The sudden increase in 2013 may be attributed to the increase in the age of consent from 16 years to 18 years with the enactment of the Protection of Children from Sexual Offences Act, 2012 [hereinafter the POCSO Act], which came into effect on 14.11.2012 as well as the Criminal Law (Amendment) Act, 2013 [hereinafter CLAA 2013]. Both the POCSO Act and CLAA 2013, apart from broadening the scope of existing sexual offences, also introduced more categories of sexual offences such as sexual harassment, stalking, voyeurism, etc. After 2014, however, the number drops in 2015 and 2017.

Rate of Juvenile Offending vis-à-vis Adults

In 2015, Maneka Gandhi stated that juvenile crime is the “fastest rising segment of crime”.¹⁵ However, the share of juvenile crime has not gone above 1.2 per cent of total cognizable crimes under the IPC over the last 12 years and has dropped from 1.12 per cent in 2006 to 1.01 per cent in 2017 [See Figure 1].¹⁶ The data preceding the enactment of the JJ Act, 2015, in fact, did not support the legislative changes enabling the trial as an adult of a child above 16 and below 18 years accused of a heinous offence.

In respect of crimes in which adults and children are alleged to have committed jointly, it is not clear whether the data appears under both incidences by children as well as adults. Neuroscience studies of the adolescent brain indicate the susceptibility to peer influences.¹⁷ In the absence of disaggregated data on the number of crimes committed jointly by adults and children or jointly by children, estimation of the extent of peer or adult influence in commission of crime is difficult.

FIGURE 1 RATE OF JUVENILE CRIME TO TOTAL CRIME



Source: NCRB. Crime in India Report, 2006–2017.

Trends in Nature of Crime

Contrary to popular assumptions about high incidences of murder and rape by children in conflict with the law (CICLs), the data reveals that most CICLs are alleged to have committed property-based offences such as theft and criminal trespass or burglary. Theft has consistently occupied the highest share of juvenile crime and contributes to about a fifth of all incidences of juvenile crime.

The National Crime Records Bureau (NCRB) needs to disaggregate data to indicate offences allegedly jointly committed with adults as it would offer significant perspectives on children’s culpability and vulnerability.

Nature of Crimes Committed by Children under the IPC

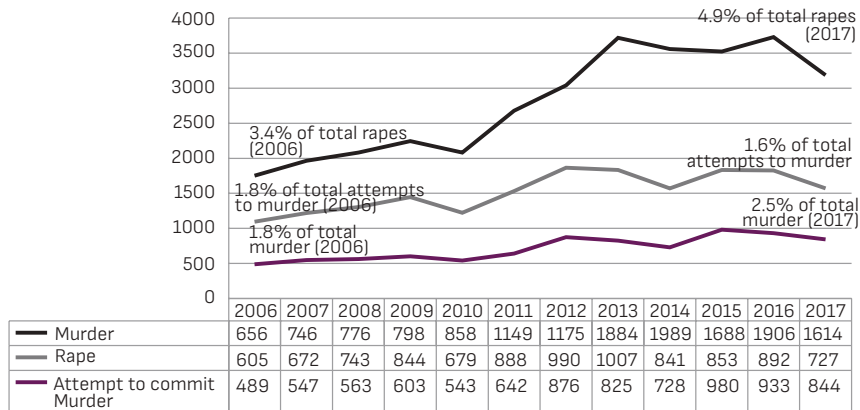
Amongst the IPC crimes, theft, criminal trespass and burglary, rape, hurt and grievous hurt, and assault on women with intent to outrage her modesty are some of the offences that children are commonly alleged to have committed.¹⁸

Since 2013, ‘assault on women with intent to outrage her modesty’ includes the offences of sexual harassment, stalking, and voyeurism in the IPC as well.

Murder, Attempt to Murder, and Rape by CICL

It is important to examine data pertaining to murder, attempt to murder, and rape, to assess whether assumptions pertaining to increased involvement of 16 and 17 years olds in these crimes is valid.¹⁹

FIGURE 2 FIGURES OF RAPE, ATTEMPT TO MURDER, AND MURDER ALLEGEDLY COMMITTED BY CHILDREN (2006–2017)



Source: NCRB. Crime in India Report, 2006–2017.

Despite increasing media narrative that adolescents are a threat to public and women's safety, the share of rape allegedly committed by children constitutes only a fraction of the net incidence of rape. The inclusion of consensual relations among or with older adolescents within the ambit of rape cases, the legislative expansion of the scope of sexual offences, and the increase in the age of consent, coupled with the gradual increase in reporting, necessitate a nuanced appreciation of data on sexual offences allegedly committed by children.

The incidence of rape alleged to have been committed by children in conflict with the law has increased more than 60 per cent since 2006. Following the Delhi gang rape case, it was widely reported that there was a 60 per cent increase in number of rapes by children in 2013 compared to 2012 without clarifying that the introduction of the POCSO Act, 2012 and the CLAA 2013 had significantly increased the scope of sexual offences and even included consensual sex amongst and with adolescents, between 16 and 18 years, within the ambit of 'rape' and 'penetrative sexual assault'.²⁰ Special Courts dealing with cases under the POCSO Act are often burdened with consensual cases amongst adolescents and younger adults following criminal complaints filed by parents of teenage girls.

Studies by the Centre for Child and the Law, National Law School of India University in the states of Delhi, Assam, Karnataka, Andhra Pradesh, and Maharashtra on the functioning of the Special Courts under the POCSO Act, revealed that cases in which the prosecutrix admitted to a relationship with the accused amounted to 21.8 per cent in Karnataka (3 districts), 23 per cent in Delhi, 15.6 per cent in Assam, 20.5 per cent in Maharashtra, and 21.2 per cent in Andhra Pradesh.²¹

A study conducted by the Delhi Commission for the Protection of Child Rights in 2015 involving 182 children [hereinafter the DCPCR study] apprehended for crimes in the state of Delhi found that 21 amongst them were alleged to have committed rape. 11 out of these 21 children were found to have been involved in cases of consensual sex or filed as false cases where the parents of girls who objected to the relationship pressed rape charges.²² The DCPCR study also revealed that 58.8 per cent of them had committed offences in the company of others evidencing a strong link between peer or adult influence and children's involvement in crimes.²³ The NCRB figures, however, do not indicate the number of offences allegedly committed jointly with adults.

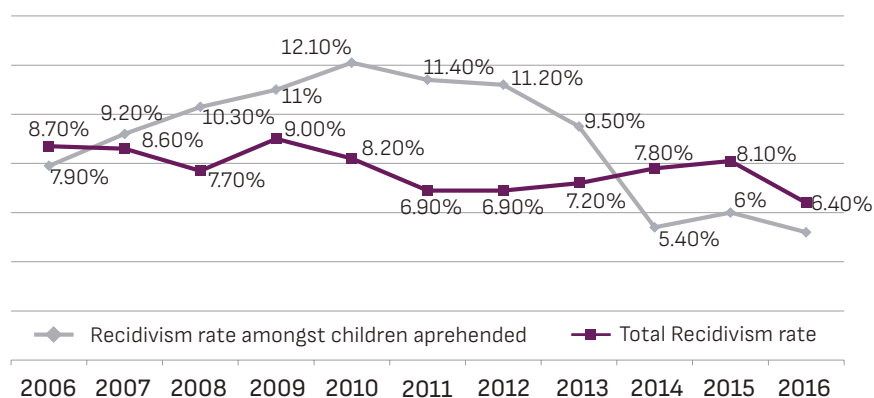
Although the trends in the figures for murder and attempt to commit murder by children in conflict with the law show an increase, in absolute numbers they remain very low. For instance, a mere 844 cases of attempt to murder and 727 cases of murder amounting to 1.6 per cent and 2.5 per cent of the total attempts to murder and murder, respectively were recorded in 2017.²⁴

3185 children were alleged to have committed rape, murder, and attempt to murder in 2017 as compared to 1750 in 2006 [See Figure 2 above]. For a large country such as India, these children can easily be reformed through positive action and intensive and sustained rehabilitative interventions. Further, an in-depth analysis of contributing factors and district-wide vulnerability mapping could help design and strengthen community-based prevention mechanisms.

Recidivism amongst CICL

Recidivism, i.e., reoffending amongst children during 2006 to 2016 was found to be low, ranging between 5.2 per cent to 12.1 per cent. In comparison to 2006 when the recidivism rate amongst children stood at 7.9 per cent, the reoffending has dropped to 5.2 per cent in 2016. The overall recidivism rate has fallen from 8.7 per cent in 2006 to 6.4 per cent in 2016 [See Figure 3].²⁵ In the absence of qualitative studies, it is difficult to gauge the factors responsible for this drop. Considering that preparation of Individual Care Plan (ICP) is rare and follow-ups on the rehabilitation and reintegration of children in conflict with the law is poor,²⁶ there is a need for state-wise tracking of the steps taken to ensure that children receive rehabilitative services and necessary support to transition safely into the community. It is not uncommon for children alleged to have committed petty offences to fall through the cracks and not receive any rehabilitative support.²⁷ They end up formally entering the system only after they graduate to serious or heinous offences, when this could have been prevented through early interventions. In a departure from previous years, in 2017, the NCRB included children who were apprehended, but not convicted in its calculation of the net recidivism rate.²⁸ This is questionable as it amounts to attribution of culpability to children who have been exonerated after due inquiry.

FIGURE 3 RECIDIVISM RATES AMONGST CHILDREN APPREHENDED AND TOTAL RECIDIVISM RATES



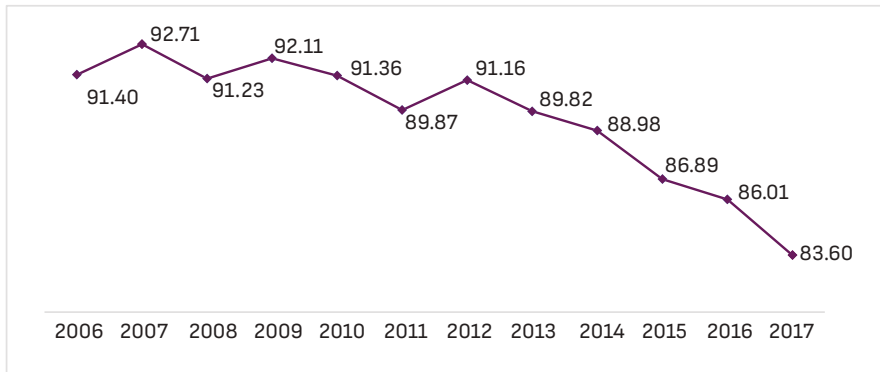
Source: NCRB. Crime in India Report, 2006-2016.

Disposal Of Cases

Trends in Nature of Disposals by the JJB

Although the number of children found to have committed an offence has decreased from 91.4 per cent in 2006 to 83.6 per cent in 2017, the 'conviction' rate is still very high [See Figure 4].²⁹ These figures indicate that majority were held 'accountable' for their actions under the JJ system, contrary to the popular opinion that children are 'let off easily'. It does, however, raise concerns about the quality of legal assistance and compliance with due process standards.

FIGURE 4 RATE OF CHILDREN FOUND TO HAVE COMMITTED THE OFFENCE

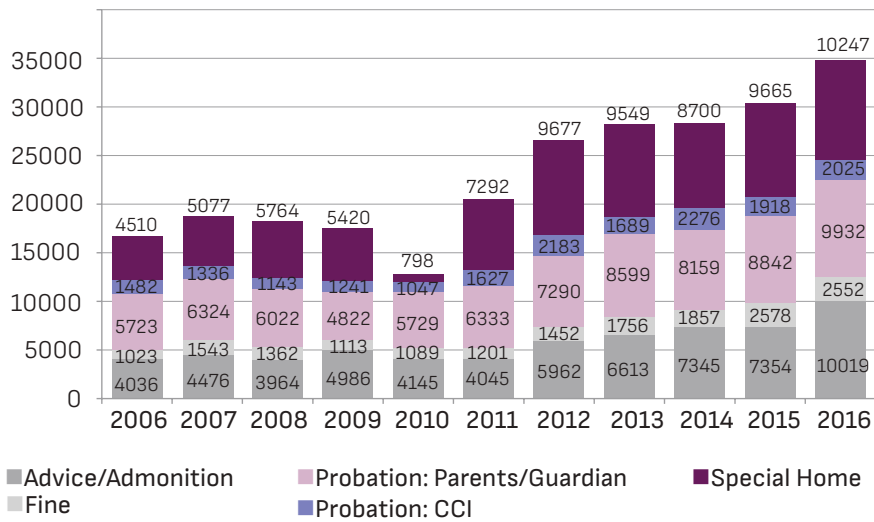


Source: NCRB. Crime in India Report, 2006-2016.

The JJ Act, 2015 as well as the erstwhile JJ Act, 2000 provide several dispositional options to the Juvenile Justice Board keeping in mind the rehabilitative framework of the legislations. Under Section 18(2), JJ Act, 2015, the Board is also permitted to pass the additional orders that require the child to attend school, attend a vocational training centre, attend a therapeutic centre, prohibit the child from visiting, frequenting or appearing at a specified place, or undergo a de-addiction programme.

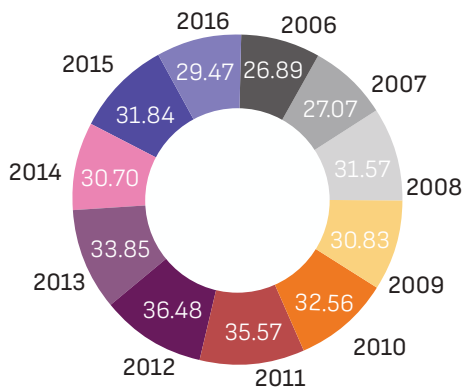
The graphs below illustrate the nature of disposals by the Juvenile Justice Board (JJB) in the cases where the child was found to have committed the offence.³⁰

FIGURE 5 NATURE OF DISPOSAL OF CASES BEFORE THE JJB (2006–2016)



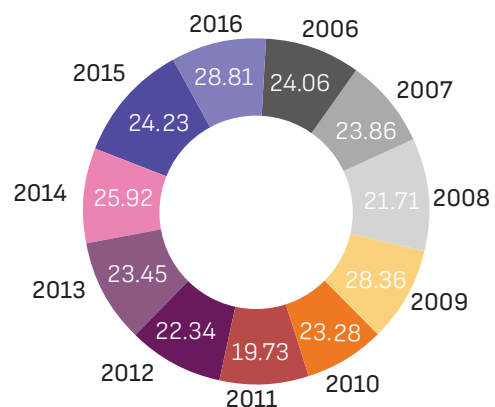
Source: NCRB. Crime in India Report, 2006-2016.

FIGURE 6 PERCENTAGE OF CASES WHERE CHILDREN WERE SENT TO SPECIAL HOME



Source: NCRB. Crime in India Report, 2006-2016.

FIGURE 7 PERCENTAGE OF CASES WHERE CHILDREN WERE SENT WITH ADMONITION/ADVICE



Source: NCRB. Crime in India Report, 2006-2016.

The 2017 report does not contain the figures on the number of children awarded probation and only provides the figures for the other categories.

TABLE 2: DISPOSAL OF CASES OF CHILDREN IN CONFLICT WITH THE LAW IN 2017

Total Number of Juveniles Apprehended	Sent for Advice / Admonition	Fine	Sent to Special Home / Fit Institution	Imprisonment	Acquitted
65485	8042	2382	7447	422	3583

Source: NCRB. Crime in India, 2017 (Table 5A.5).

Between 2006 and 2016, orders sending children to the Special Home have varied from 26.89 per cent to 36.48 per cent respectively. Amongst the cases in which the child was sent home after advice or admonition, the rate has varied between 19.73 per cent and 28.81 per cent for 2006 and 2016. Imposition of fines has constituted the least ordered disposition varying from 5.47 per cent to 8.49 per cent between 2006 and 2016. Probation under parental care or fit facility care has constituted, on an average, 34.4 per cent of dispositions between 2006-16.

Under probation, majority of the children were released under the care of parent/guardian and only a minority of the children were placed under the care of a fit facility. The disaggregated data available in the Crime in India reports suggests that JJBs have not passed orders pertaining to community service and group counselling. Further, alternatives have not been combined, in that, a child has not been ordered to undergo group counselling and released on probation.

The Crime in India reports for the years 2016 and 2017 do not indicate the number of cases in which the CICL was found to be in need of care and protection under Section 17(2), JJ Act, 2015 or the matter was transferred to the Child Welfare Committee (CWC) under Section 8(3)(g), JJ Act, 2015. It is also silent on the number of cases in which the additional dispositions under Section 18(2) were ordered.

Crime in India, 2017 contains a new category of children awarded imprisonment presumably after being transferred to the Children's Court to be tried as an adult. The report is silent on the offences for which imprisonment was imposed. In 2017, 422 children were awarded imprisonment.³¹ The number of children tried as an adult by the Children's Court, the number of children not tried as adults by the Children's Court, and the total number of preliminary assessments done by JJBs have not been reported.

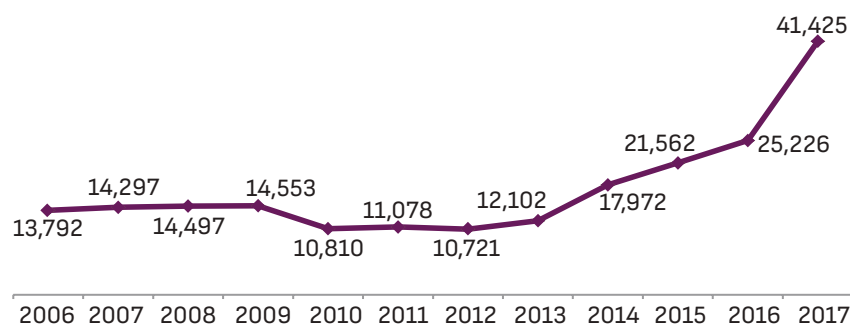
Pendency before the JJB

The figures on pendency before the JJB has increased nearly three-fold over the period of 12 years [See Figure 8]. Structural factors such as the failure to establish JJBs in all districts, limited sittings, absence of full-time Principal Magistrates and Members, inadequate infrastructure, insufficient number of Probation Officers, delay in filing chargesheets, difficulties in securing presence of the child and witnesses etc., may have contributed towards this.³² The reluctance to terminate inquiries in petty offences which are inconclusive even after six months has also resulted in cases pending for several years.³³

The figures on pendency before the JJB has increased nearly three-fold over the period of 12 years

The figures on pendency before the JJB has increased nearly three-fold over the period of 12 years.

Pendency before the JJB has been flagged during successive Regional Round-table Conferences held under the aegis of the Supreme Court Committee on Juvenile Justice. In 2015-2016, States reported to have increased JJB sittings, established additional JJBs, given Magistrates full-time charge of JJBs, ensured that JJBs are working full-time, and monitored pendency.³⁴ *Crime in India, 2017*, however, shows that from 2016 to 2017 there has been a 64 per cent increase in pendency. This data underlines the need to intensify the efforts to address the structural gaps and effectively implement the solutions identified to address pendency.

FIGURE 8 PENDENCY BEFORE THE JJB

Source: NCRB. Crime in India Report, 2006-2017.

A Socio-Economic Profile Of CICL

Socio-economic profiling of children enables an understanding of the potential impact or link between poverty, literacy, family situation, and other social factors on juvenile delinquency. It is important to recognise that profiling is based on the cases that get registered. There are cases that never enter the system because of threats, intimidation, or use of privilege and power to circumvent the system.

Age Profile

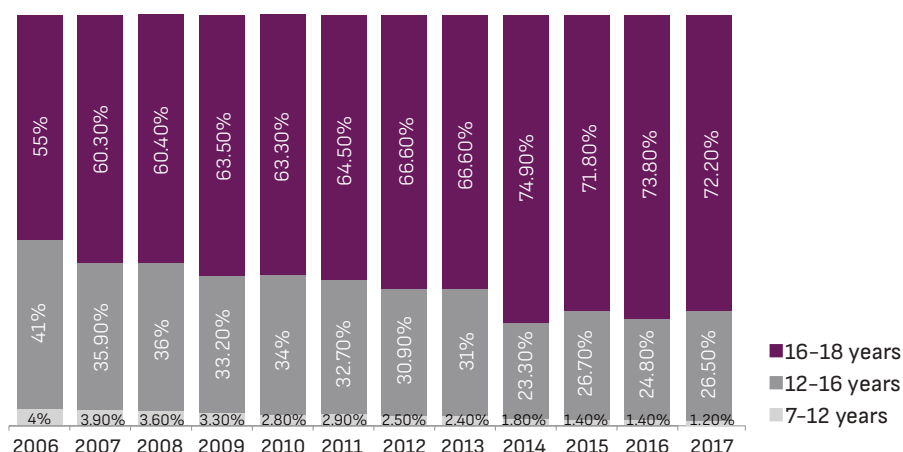
The Indian legal system sets the Minimum Age of Criminal Responsibility (MACR) at seven years, which means that no person below the age of 7 years can be punished for an offence.³⁵ In cases, where children between 7 to 12 years of age commit an offence, criminal responsibility arises unless it is established that the child has not attained sufficient maturity of understanding to judge the nature and consequences of the conduct.³⁶

While the UNCRC requires member states to set a MACR, it does not specify a certain age for this purpose.³⁷ Considering the evolving capacity and brain development, the Committee on the Rights of the Child has encouraged States to “take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age.”³⁸

A qualitative study is required to understand the application of the presumption of *doli incapax* for children between 7 - 12 years by JJBs. Are children in this age bracket receiving competent legal representation? Is their maturity being presumed by the JJBs or is this examined at a preliminary stage before inquiry is undertaken?

The UNCRC also requires that all children alleged to have violated a penal law be treated under laws, procedures, authorities and institutions specifically applicable to children.³⁹ Reiterating this, the Committee on the Rights of the Child in General Comment 24 has stated that, “The child justice system should apply to all children above the minimum age of criminal responsibility but below the age of 18 years at the time of the commission of the offence.”⁴⁰ Further, it “recommends that those States parties that limit the applicability of their child justice system to children under the age of 16 years (or lower), or that allow by way of exception that certain children are treated as adult offenders (for example, because of the offence category), change their laws to ensure a non-discriminatory full application of their child justice system to all persons below the age of 18 years at the time of the offence.”⁴¹

The JJ Act, 2015 by introducing the transfer system in respect of children aged 16 and 17 years old, is in clear violation of India’s obligation under the UNCRC.

FIGURE 9 DISTRIBUTION OF JUVENILE DELINQUENCY (AGEWISE)

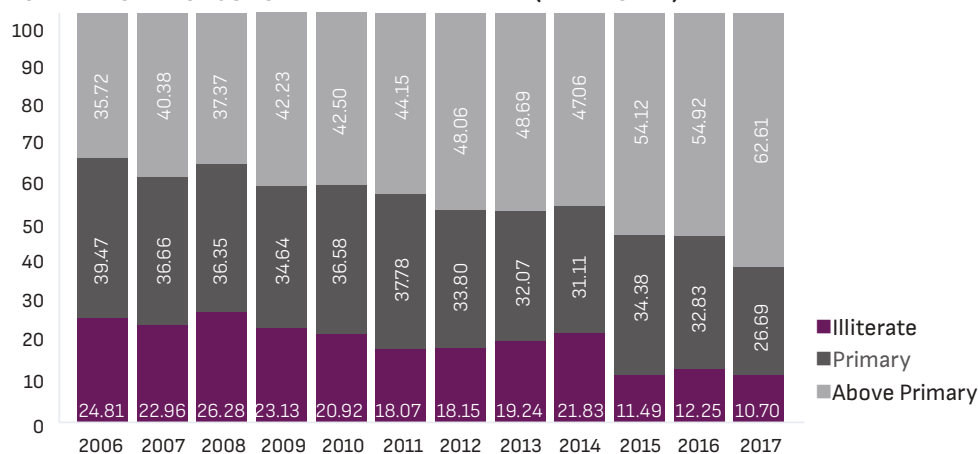
Source: NCRB. Crime in India Report, 2006-2017.

The share of juvenile delinquency of 16-18 year olds has increased from 55 per cent in 2006 to 72.2 per cent in 2017, while the share of delinquency among the other two age groups (12-16 years and 7-12 years) has dropped over the 12-year period [See Figure 9].⁴²

Significant media focus has been on the share of offending amongst 16-18 year olds and this has served as a justification for the introduction of the transfer system to enable trial in an adult court of those above 16 years accused of heinous offences.⁴³ Neuroscience findings show that reward and risk seeking increases rapidly between preadolescence and late adolescence, reaching a peak at age 19, and subsequently declining by mid-20s.⁴⁴ Although offending amongst 16-18 year olds may be higher amongst children, when their share of offending is compared to total persons arrested, they constitute a miniscule percentage. For instance, in 2017, 16-18 year olds constituted only 0.48 per cent of total persons arrested that year.⁴⁵

Literacy, Family Income & Support

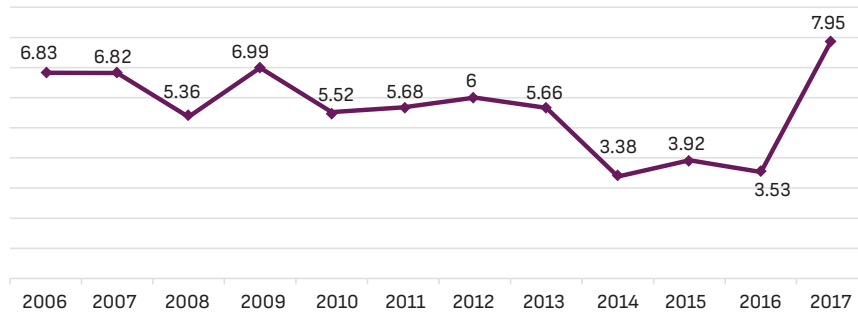
The educational profile of children apprehended has shown a gradual decrease in the rate of “illiterate” children coming into conflict with the law from 24.8 per cent in 2006 to 10.7 per cent in 2017 [See Figure 10].⁴⁶ The corresponding share of children with education above the primary level has increased significantly, and has more than doubled in absolute numbers. The quality of education received and the frequency of attendance as opposed to mere enrollment cannot be gauged from these numbers.

FIGURE 10 LITERACY AMONGST CHILDREN APPREHENDED (IN PER CENT)

Source: NCRB. Crime in India Report, 2006-2017.

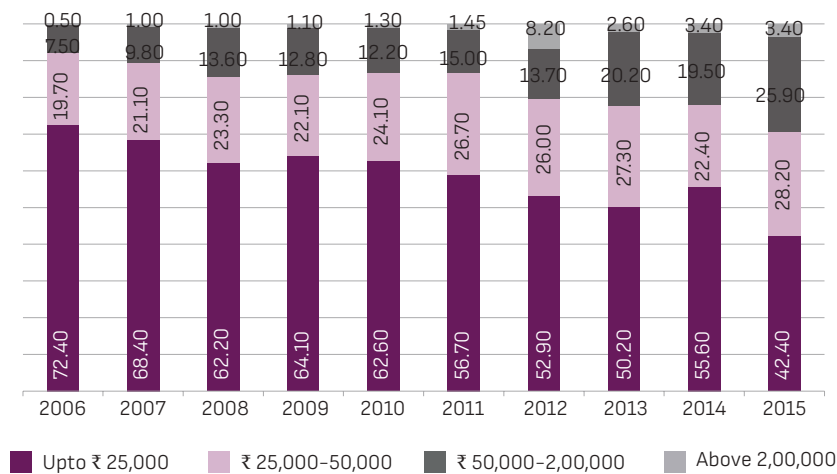
The number of children experiencing homelessness amongst those apprehended for allegedly being in conflict with the law has come down from 6.8 per cent in 2006 to 3.5 per cent in 2016 and as such no discernable link is made out between juvenile delinquency and homelessness. However, the recent 2017 data shows a sudden spike in children experiencing homelessness to 7.9 per cent of the total apprehended children [See Figure 11].⁴⁷ Although statistically speaking, most children in conflict with the law were found to be living with parents or guardians, there is no qualitative data available on the nature of parental and family care received by children. The data available, however, points to the need for family strengthening services.⁴⁸

FIGURE 11 FAMILY BACKGROUND OF CHILDREN APPREHENDED (IN PER CENT)



Source: NCRB. Crime in India Report, 2006-2017.

FIGURE 12 ANNUAL FAMILY INCOME OF CHILDREN APPREHENDED (IN PER CENT)



Source: NCRB. Crime in India Report, 2006-2015.

Most children come from homes where the annual income is not more than ₹ 50,000, although this rate has dropped over the decade from a whopping 92.1 per cent in 2006 to 70.6 per cent in 2015. This underlines that children from financially marginalised backgrounds are disproportionately impacted. The rate of children coming from homes where the annual family income is below ₹ 25,000 has dropped from 72.4 per cent in 2006 to 42.4 per cent in 2015.⁴⁹ The rate of children from homes where the annual family income is more than ₹ 50,000 but below ₹ 2,00,000 was only 7.5 per cent in 2006 and this has steadily climbed to 26 per cent as of 2015.⁵⁰ In comparison, the rate of children from families with annual income of more than ₹ 2,00,000 increased only marginally from 0.5 per cent in 2006 to 3.4 per cent in 2015.⁵¹ While poverty and delinquency maybe linked, it may not be that children from families with higher incomes are not involved in crimes. The likelihood of such children being better shielded from the impact of the law through private settlements, attempts at preventing reporting, or because of better access to lawyers cannot be ruled out.

Crime in India, 2016 and 2017 reports do not include data on family income of children apprehended. At this stage, it is unclear whether the reporting on this information has been discontinued permanently.

It is important here to note that the NCRB data only reveals superficial quantitative data in respect of the socio-economic conditions of children. A nation-wide qualitative data on the conditions of these children is not available although some studies have attempted to understand the reasons for juvenile delinquency and the link between delinquency and socio-economic condition of children and their families. For instance, the DCPCR study reveals that of the 182 apprehended children interviewed, only 43 were pursuing education at the time of apprehension, 62.1 per cent of the children were working at the time of apprehension,⁵² 57 per cent stated to be living in violent neighbourhoods,⁵³ 65 per cent rarely took part in games, sports or any form of playing,⁵⁴ and 78.6 per cent of the children admitted to having experienced corporal punishment as a form of discipline at home.⁵⁵

Conclusion

Children in conflict with the law are a marginalised and overlooked demographic. In their treatment of adolescents above 16 years and below 18 years accused of heinous offences, the drafters of JJ Act, 2015, chose to overlook the low and constant rate of juvenile crime, as well as constitutional rights, international obligations, and neuro-biological factors that establish their vulnerability and need for equal protection under juvenile justice.

“It’s difficult to imagine the power that you’re going to have when so many different sorts of data are available.”

Tim Berners-Lee

The wide definition of heinous offences under the JJ Act, 2015 has resulted in several 16-18 year olds being subjected to the risk of being tried under the adult criminal justice system. The increase in the age of consent for sexual intercourse to 18 years has translated into more number of reported cases of rape and penetrative sexual assault against adolescent boys. The failure to recognise normative adolescent sexual expressions, evolving capacities and consensual sexual intercourse among adolescents has also resulted in the criminalisation of this group.

As has been emphasised by the Supreme Court Committee on Juvenile Justice, the focus should be on the individual child and the steps taken by the system to facilitate the child’s reintegration into society. Data thus needs to be used to hold the State machinery accountable to children in conflict with the law.

Crime in India reports will benefit from inclusion on data on number and type of cases in which a child is co-accused with an adult. Such data is necessary to enhance our understanding of and response towards children used by adult groups to commit offences or involved in gang-based offences. Data on the number of preliminary assessments conducted by the JJBs, offences considered heinous by the JJBs, number of cases transferred by the JJBs to Children’s Courts, number of cases in which the child was tried as an adult by a Children’s Court, and cases in which the Children’s Court conducted an inquiry like a JJB despite the child being transferred to such Children’s Court, need to be included. The types of orders passed by the Children’s Court also need to be captured along with data on ICPs included in the final orders by the JJBs and Children’s Courts. These authorities should also be asked to submit data on adherence to the ICP and types of rehabilitative services made available to a child in conflict with the law in a Special Home and a Place of Safety.

Unless the data points match the objectives and philosophy of juvenile justice, the risk of the use of legislative power to derogate the rights of children in conflict with the law will remain high.

Endnotes

- 1 PRS India. Para 4, Statement of Objects and Reasons, JJ Bill, 2014. <https://www.prsindia.org/uploads/media/Juvenile%20Justice/Juvenile%20Justice%20Bill,%202014.pdf>
- 2 PTI. August 18, 2014. 132 per cent increase in cases of attack on women by juveniles. <https://www.deccanherald.com/content/426144/132-per-cent-increase-cases.html>; and Dhawan, Himanshi. July 15, 2014. Juvenile murderers, rapists could be tried as adults. The Times of India. http://timesofindia.indiatimes.com/articleshow/38401479.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst
- 3 A coalition of NGOs, academic institutions, and individuals working for children in India.
- 4 NCRB. Crime in India, 2013 (Table 10.8, Table 1.3).
- 5 Parliament of India, Rajya Sabha. February 25, 2015. Two Hundred Sixty-Fourth Report of the Department-Related Parliamentary Standing Committee on Human Resource Development on The Juvenile Justice (Care and Protection of Children) Bill, 2014. https://www.prsindia.org/sites/default/files/bill_files/SC_report-_juvenile_justice_1.pdf
- 6 Parliament of India. May 6, 2015. Lok Sabha Debates.
- 7 Parliament of India. May 7, 2015. Lok Sabha Debates.
- 8 Justice K S Puttasamy (Retd) & Anr v. Union of India [Writ Petition (Civil) No. 494 of 2012], para 126; Navtej Singh Johar v. Union of India [Writ Petition (Criminal) No. 76 of 2016], para 19(ii).
- 9 Mekkad, Salil. March 1, 2017. Tried as adults, minors sentenced to life term for murder by Jhabua court, The Times of India. <https://timesofindia.indiatimes.com/city/indore/tried-as-adults-minors-sentenced-to-life-for-murder-by-jhabua-court/articleshow/57410446.cms>
- 10 The Logical Indian. June 28, 2019. Hyderabad: In A First, Court Sentences 19-Yr-Old to Double Life Imprisonment for Crime Committed as a Juvenile. <https://thelogicalindian.com/news/hyderabad-juvenile-life-sentence/>
- 11 Census of India, 2011. Table C-13, Single Year Age Data; NCRB. Crime in India, 2017 (Table 5A.4); Crime in India, 2011 (Table 10.6).
- 12 NCRB. Crime in India, 2006 (Table 10.4, Table 10.5); Crime in India, 2017 (Table 5A.1) Note: data on incidence of juvenile crime calculated by adding data on juvenile delinquency incidence under IPC crimes and SLL crimes.
- 13 NCRB. Crime in India, 2017 (Table 1.1, Table 5A.1).
- 14 NCRB. For data on incidence of juvenile crime: Crime in India, 2006 (Table 10.4, Table 10.5); Crime in India, 2007 (Table 10.2, Table 10.3); Crime in India, 2008 (Table 10.2, Table 10.3); Crime in India, 2009 (Table 10.2, Table 10.3); Crime in India, 2010 (Table 10.2, Table 10.3); Crime in India, 2011 (Table 10.2, Table 10.3); Crime in India, 2012 (Table 10.2, Table 10.3); Crime in India, 2013 (Table 10.2, Table 10.3); Crime in India, 2014 (Table 10.2, Table 10.3); Crime in India, 2015 (Table 10.1, Table 10.2); Crime in India 2016 (Table 5A.1, 5A.4); and Crime in India 2017 (Table 5A.1, 5A.6) Note: data on incidence of juvenile crime is calculated by adding data on juvenile delinquency incidence under IPC crimes and SLL crimes).
For data on apprehension of children Crime in India, 2013, (Table 10.6) (used for data between 2006 to 2013), Crime in India, 2014 (Table 10.4); Crime in India, 2015 (Table 10.4 - calculated by adding data on children apprehended for SLL crimes and IPC crimes); and Crime in India, 2016 (Table 5A.4).
- 15 Times News Network. Dec 23, 2015. Now, 16-18-year-olds won't get off lightly for serious crime. http://timesofindia.indiatimes.com/articleshow/50290198.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst
- 16 NCRB. For data on total juvenile delinquency: Crime in India, 2006 (Table 10.4, Table 10.5); Crime in India, 2007 (Table 10.2, Table 10.3); Crime in India, 2008 (Table 10.2, Table 10.3); Crime in India, 2009 (Table 10.2, Table 10.3); Crime in India, 2010 (Table 10.2, Table 10.3); Crime in India, 2011 (Table 10.2, Table 10.3); Crime in India, 2012 (Table 10.2, Table 10.3); Crime in India, 2013 (Table 10.2, Table 10.3); Crime in India, 2014 (Table 10.2, Table 10.3); and Crime in India, 2015 (Table 10.1, Table 10.2). For data on total crime incidence between 2006-2015: Crime in India, 2015 (Table 1.2). For data on cognizable offences under the IPC between 2006 to 2015: Crime in India, 2015 (Table 10.1); Crime in India, 2016 (Table 5A.2, Table 1.1); and Crime in India 2017 (Table 1.1, Table 5A.2).
- 17 Centre for Law, Brain and Behavior, Massachusetts General Hospital. Juvenile Justice & the Adolescent Brain. <http://clbb.mgh.harvard.edu/juvenilejustice/>
- 18 NCRB. Crime in India, 2006 (Table 10.4); Crime in India, 2007 (Table 10.2); Crime in India, 2013 (Table 10.2 - used for data on different crime heads between 2008 - 2013); Crime in India, 2014 (Table 10.2); Crime in India, 2015 (Table 1.3 - used for total crime data between 2010 - 2015); and Crime in India, 2016 (Table 1.2).
- 19 NCRB. Crime in India, 2007 (Table 10.2 - used for data on different crime heads between 2006 - 2007); Crime in India, 2013 (Table 10.2 - used for data on different crime heads between 2008 - 2013); Crime in India, 2014 (Table 10.2); Crime in India, 2015 (Table 10.2); Crime in India, 2016 (Table 5A.2); Crime in India 2017 (Table 5A.2). For total data on the crime heads: Crime in India, 2017 (Table 1.2) and Crime in India, 2006 (Table 1.3).
- 20 Jain, Adarsh. Jul 14, 2014. 60 per cent rise in rape by juveniles in 2013: NCRB data. The Times of India. http://timesofindia.indiatimes.com/articleshow/38348796.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst
- 21 Centre for Child and the Law, National Law School of India University. 2018. Implementation of the POCSO Act, 2012 by the Special Court: Issues and Challenges, p.133. <https://www.nls.ac.in/ccl/publications/POCSOIMPLEMENT2018.pdf>
- 22 Delhi Commission for the Protection of Child Rights. June 2015. Why Children Commit Offences: Study on Children in Conflict with Law in Delhi, p.30. <http://www.butterflieschildrights.org/wp-content/uploads/2018/07/Why-Children-Commit-Offences.pdf>
- 23 Delhi Commission for the Protection of Child Rights. June 2015. Why Children Commit Offences: Study on Children in Conflict with Law in Delhi, p.33. <http://www.butterflieschildrights.org/wp-content/uploads/2018/07/Why-Children-Commit-Offences.pdf>
- 24 NCRB. Crime in India, 2017 (Table 5A.2, Table 1.2).
- 25 NCRB. For data on rate of recidivism amongst children apprehended: Crime in India 2006, (Table 10.14); Crime in India 2007, (Table 10.14); Crime in India 2008, (Table 10.14); Crime in India 2009, (Table 10.14); Crime in India 2010, (Table 10.14); Crime in India 2011, (Table 10.14); Crime in India 2012, (Table 10.14); Crime in India 2013, (Table 10.14); Crime in India 2014, (Table 10.6); Crime in India 2015, (Table 10.6); and Crime in India 2016, (Table 19C.2). For data on total recidivism rates: Crime in

- India 2006, (Table 11.1); Crime in India 2007, (Table 11.1); Crime in India 2008, (Table 11.1); Crime in India 2009, (Table 11.1); Crime in India 2010, (Table 11.1); Crime in India 2011, (Table 11.1); Crime in India 2012, (Table 11.1); Crime in India 2013, (Table 11.1); Crime in India 2014, (Table 11.1); Crime in India 2015, (Table 11.1); and Crime in India 2016, (Table 19C.1).
- 26 Supreme Court Committee on Juvenile Justice. August 2017. Effective Implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 – Focus on Rehabilitative Services and Linkages with the POCSO Act, 2012, p.13; and Re: Exploitation of Children in Orphanages in Tamil Nadu, Writ Petition (Civil) No. 473 of 2005, decided on 09.02.2018, para 46.
- 27 Supreme Court Committee on Juvenile Justice. August 2017. Effective Implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 – Focus on Rehabilitative Services and Linkages with the POCSO Act, 2012, p.13; and Re: Exploitation of Children in Orphanages in Tamil Nadu, Writ Petition (Civil) No. 473 of 2005, decided on 09.02.2018, para 46.
- 28 NCRB. Crime in India, 2017 (Table 19C.1).
- 29 NCRB. Crime in India, 2006 (Table 10.13); Crime in India, 2007 (Table 10.13); Crime in India, 2008 (Table 10.13); Crime in India, 2009 (Table 10.13); Crime in India, 2010 (Table 10.13); Crime in India, 2011 (Table 10.13); Crime in India, 2012 (Table 10.13); Crime in India, 2013 (Table 10.13); Crime in India, 2014 (Table 10.5); Crime in India, 2015 (Table 10.5); Crime in India, 2016 (Table 5A.5); and Crime in India, 2017 (Table 5A.5).
- 30 NCRB. Crime in India, 2006 (Table 10.13); Crime in India, 2007 (Table 10.13); Crime in India, 2008 (Table 10.13); Crime in India, 2009 (Table 10.13); Crime in India, 2010 (Table 10.13); Crime in India, 2011 (Table 10.13); Crime in India, 2012 (Table 10.13); Crime in India, 2013 (Table 10.13); Crime in India, 2014 (Table 10.5); Crime in India, 2015 (Table 10.5); and Crime in India, 2016 (Table 5A.5).
- 31 NCRB. Crime in India, 2017 (Table 5A.5).
- 32 UNICEF. 2016. Study on Pendency of Cases before the Juvenile Justice Boards in Assam, July 2015 to May 2016, pp. iv–vii.
- 33 Supreme Court Committee on Juvenile Justice. April 25, 2015. Effective Implementation of The Juvenile Justice (Care and Protection of Children) Act 2000: National Conference, p.16.
- 34 Supreme Court Committee on Juvenile Justice. September 2016. Strengthening Rehabilitation and Restoration of Children under the Juvenile Justice System: Recommendations Regional Consultations, pp.11–12.
- 35 Section 82 of the Indian Penal Code, 1860.
- 36 Section 83 of the Indian Penal Code, 1860.
- 37 Article 40(3)(a) of the UNCRC.
- 38 Committee on the Rights of the Child. 18 September 2019. General Comment 24 on children’s rights in the child justice system, CRC/C/GC/24, para 22.
- 39 Article 40(3) of the UNCRC.
- 40 UN Committee on the Rights of the Child. General Comment 24, Para 29.
- 41 UN Committee on the Rights of the Child. General Comment 24, Para 30.
- 42 NCRB. Crime in India, 2013 (Table 10.7- used for data on age groups of children apprehended between 2006–2013); Crime in India, 2014 (Table 10.4); Crime in India, 2015 (Table 10.4); and Crime in India, 2016 (Table 5A.4); and Crime in India, 2017 (Table 5A.4).
- 43 Varma, Satvik. January 14, 2013. Punishing juvenile culprits: We need to lower the qualifying age and ensure changes in our value systems, The Economic Times. <https://economictimes.indiatimes.com/opinion/et-commentary/punishing-juvenile-culprits-we-need-to-lower-the-qualifying-age-and-ensure-changes-in-our-value-systems/articleshow/18012395.cms>
- 44 Steinberg, Laurence et al. February 2017. Around the world, adolescence is a time of heightened sensation seeking and immature self-regulation, *Developmental Science* 21(2).
- 45 NCRB. Crime in India, 2017 (Table 5A.4, Table 19A.1, Table 19A.3).
- 46 NCRB. Crime in India, 2006 (Table 10.14); Crime in India, 2007 (Table 10.14); Crime in India, 2008 (Table 10.14); Crime in India, 2009 (Table 10.14); Crime in India, 2010 (Table 10.14); Crime in India, 2011 (Table 10.14); Crime in India, 2012 (Table 10.14); Crime in India, 2013 (Table 10.14); Crime in India, 2014 (Table 10.6); Crime in India, 2015 (Table 10.6); Crime in India, 2016 (Table 5A.6); and Crime in India, 2017 (Table 5A.6).
- 47 NCRB. Crime in India, 2006 (Table 10.14); Crime in India, 2007 (Table 10.14); Crime in India, 2008 (Table 10.14); Crime in India, 2009 (Table 10.14); Crime in India, 2010 (Table 10.14); Crime in India, 2011 (Table 10.14); Crime in India, 2012 (Table 10.14); Crime in India, 2013 (Table 10.14); Crime in India, 2014 (Table 10.6); Crime in India, 2015 (Table 10.6); Crime in India, 2016 (Table 5A.6); and Crime in India, 2017 (Table 5A.6).
- 48 NCRB. Crime in India, 2006 (Table 10.14); Crime in India, 2007 (Table 10.14); Crime in India, 2008 (Table 10.14); Crime in India, 2009 (Table 10.14); Crime in India, 2010 (Table 10.14); Crime in India, 2011 (Table 10.14); Crime in India, 2012 (Table 10.14); Crime in India, 2013 (Table 10.14); Crime in India, 2014 (Table 10.6); and Crime in India, 2015 (Table 10.6).
- 49 NCRB. Crime in India, 2006 (Table 10.14); Crime in India, 2007 (Table 10.14); Crime in India, 2008 (Table 10.14); Crime in India, 2009 (Table 10.14); Crime in India, 2010 (Table 10.14); Crime in India, 2011 (Table 10.14); Crime in India, 2012 (Table 10.14); Crime in India, 2013 (Table 10.14); Crime in India, 2014 (Table 10.6); and Crime in India, 2015 (Table 10.6).
- 50 NCRB. Crime in India, 2006 (Table 10.14); Crime in India, 2007 (Table 10.14); Crime in India, 2008 (Table 10.14); Crime in India, 2009 (Table 10.14); Crime in India, 2010 (Table 10.14); Crime in India, 2011 (Table 10.14); Crime in India, 2012 (Table 10.14); Crime in India, 2013 (Table 10.14); Crime in India, 2014 (Table 10.6); and Crime in India, 2015 (Table 10.6).
- 51 NCRB. Crime in India, 2006 (Table 10.14); Crime in India, 2007 (Table 10.14); Crime in India, 2008 (Table 10.14); Crime in India, 2009 (Table 10.14); Crime in India, 2010 (Table 10.14); Crime in India, 2011 (Table 10.14); Crime in India, 2012 (Table 10.14); Crime in India, 2013 (Table 10.14); Crime in India, 2014 (Table 10.6); and Crime in India, 2015 (Table 10.6).
- 52 Delhi Commission for the Protection of Child Rights. 2015. Why Children Commit Offences: Study on Children in Conflict with Law in Delhi, p.26.
- 53 Delhi Commission for the Protection of Child Rights. 2015. Why Children Commit Offences: Study on Children in Conflict with Law in Delhi, p.47.
- 54 Delhi Commission for the Protection of Child Rights. 2015. Why Children Commit Offences: Study on Children in Conflict with Law in Delhi, p.48.
- 55 Delhi Commission for the Protection of Child Rights. 2015. Why Children Commit Offences: Study on Children in Conflict with Law in Delhi, p.39.

13

CHILD MARRIAGE

Ongoing yet Changing

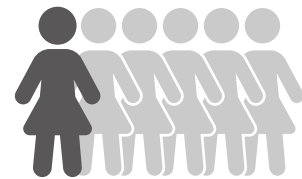
ENAKSHI GANGULY
INDIRA PANCHOLI



Introduction

Child Marriage is an age-old custom in India. It has continued despite social reform movements and legislations against it. Over the years, along with socio-cultural normative values, 'safety of girls', 'having to pay lower dowry for younger girls' and other similar notions, have become additional reasons given to justify early marriage. Although practiced across most communities in India, today it is most prevalent in rural areas particularly among Scheduled Castes (SC) and Tribes (ST) and Other Backward Communities (OBCs).¹

Child marriage has now come to be recognised as a violation of all human rights of children. While it contains severe health and educational implication, the point that has often not been addressed enough is the aspect of the child's violation of the right to protection. It is now well established that child marriage leads to higher levels of violence experienced by girls. They experience physical and sexual violence not just by their own husbands, but also from other family members. Serious cases often remain hidden and unreported because of family honour. However, it has continued to be looked upon as a social evil instead of crime. Not surprising therefore that the Child Marriage Prohibition and Regulation Act (CMPA), 2006, still remains unenforced in most of India. Even in cases that are reported under



1/6

**girls married before
the age of 18 years**

Munni (name changed) from West Bengal was married at the age of 14. She was sexually abused by several men in the family she was married into. She was finally rescued by her parents after two years of violent suffering, and that too only after her health was seriously affected. However, Munni's parents still did not want to her end the marriage.

Sarita (name changed), a 15 year old from Rajasthan was forced by her mother-in-law to have sex with the father-in-law. Her husband, a young boy himself, found himself helpless and unable to prevent the abuse. He would stand outside his father's room where the girl was being raped and cry.

PCMA, disparities in social conditions that lead to such reportings have been brought to forefront by the recent report of Partners for Law in Development (PLD). The report highlights extensive reporting in cases of kidnapping and abduction from which the marriage follows as compared to instances where children are forced into marriage by their guardians. The disparity extends into the redressal mechanism as marriages that can be shown as a result of kidnapping and abduction are considered lacking legal validity and can be annulled immediately whereas the provision of annulling guardian forced marriages is reserved only after underage parties of the marriage attain legal-adulthood (i.e., 18 years).²

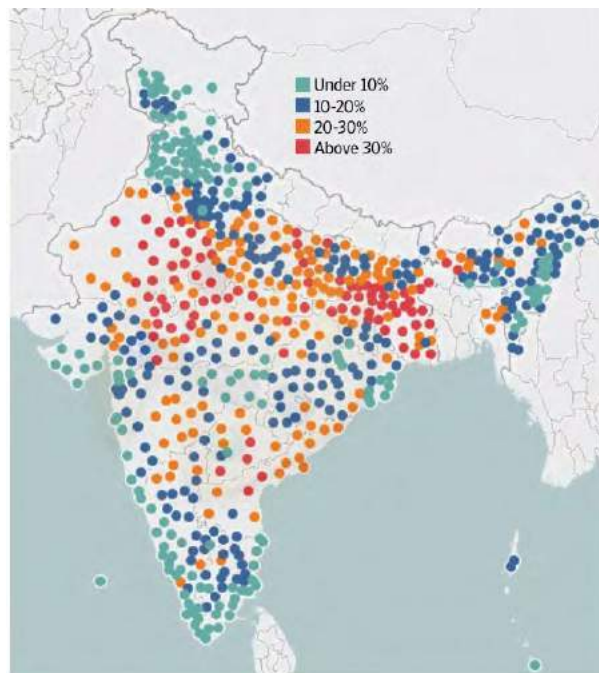
While social attitudes and financial concerns are perceived as important reasons for the continuance of child marriage, there are other reasons that contribute to its existence in India. Despite the formulation of laws, implementation mechanisms at the state and district levels are weak and inadequate. In addition, lack of role clarity and inadequate capacities of the personnel implementing the various laws and programmes, has led to the non-implementation overall.

Inadequate capacity among government personnel has two sources. First, it may be due to an information gap. Second, and more importantly, their actions may be guided by social norms, values and attitudes instead of only guided by constitutional norms and the law. This impacts social change. The experience in India has shown that mere legislation is not enough. While sensitised personnel are proactive in implementing their duties, there must also be mechanisms for checking that there is discharge of duties by duty-bearers. Thus, a multipronged strategy of interventions targeting several levels of implementation and change is required.

Where and How Many Child Marriages

According to the Census 2011, in the nine year period leading to 2011, 15.3 million girl-child were married before they reached the age of 18 years, which is about 20 per cent of all females married during that period. Of the India's 640 districts in the Census 2011, in 238 districts, the incidence of girl-child marriages is 20-30 per cent (orange dots) or above 30 per cent (red dots).¹ These districts lie mostly in Rajasthan, Andhra Pradesh, Uttar Pradesh, Bihar, West Bengal, Madhya Pradesh and Jharkhand.³

FIGURE 1 GIRLS MARRIED BEFORE 18 YEARS AS PER CENT OF TOTAL FEMALE MARRIED



Source: Girl child marriage: Which districts fare the worst in India? The Livemint. 24 October 2017.

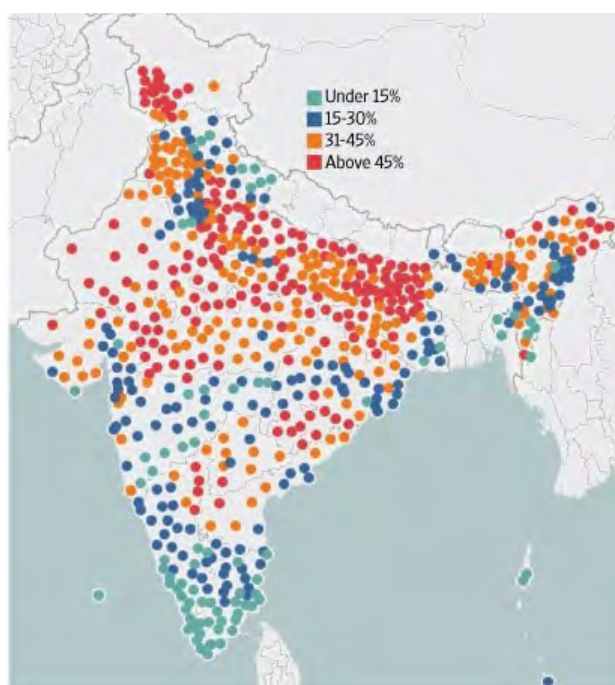
i As of 2019 there are a total of 731 districts, up from the 640 in the 2011 Census of India and the 593 recorded in the 2001 Census of India.

Seven states – Uttar Pradesh, Andhra Pradesh, West Bengal, Rajasthan, Bihar, Maharashtra and Madhya Pradesh – account for 70 per cent of child marriages in the country. Differences in intensity of patriarchy, marriage system and kinship structure between northern and southern states may partly explain the regional differences in demographic behaviour and outcomes.⁴

Child Marriage and Education

Keeping girls in schools has been seen as a way of postponing marriage. According to Census 2011, of these 15.3 million girl-child brides, 5.7 million (37 per cent) were illiterate. In 394 districts, more than 30 per cent of girl-child brides were illiterate, and these districts being scattered across all states except Karnataka, Tamil Nadu and Kerala. The worst districts were Alirajpur (86 per cent of child brides) and Jhabua (81 per cent) in Madhya Pradesh, and Ramban in Jammu and Kashmir (80 per cent). Figure 2 shows the percentage of girl-child brides in these 640 districts who are illiterate—cannot read and write in any language, as per Census 2011.

FIGURE 2 ILLITERATES AMONG GIRLS MARRIED BEFORE 18 YEARS (PER CENT)



Source: Girl child marriage: Which districts fare the worst in India? The Livemint. 24 October 2017.

THOUGH OUTLAWED, CHILD MARRIAGE PERSISTS IN KARNATAKA

Anitha Pailoor, DH News Service, Bengaluru, FEB 10 2019, 01:38AM IST UPDATED: FEB 10 2019, 09:30AM IST Teenage mothers in a village in Bagalkot district.

In Tulasigeri, like in any other village of Bagalkot district, girls generally drop out of school after Class 7, only to enter into marriage. Fourteen is the age when their right to education is curtailed, not just because of the physical changes but also due to the lack of availability and access to high school education.

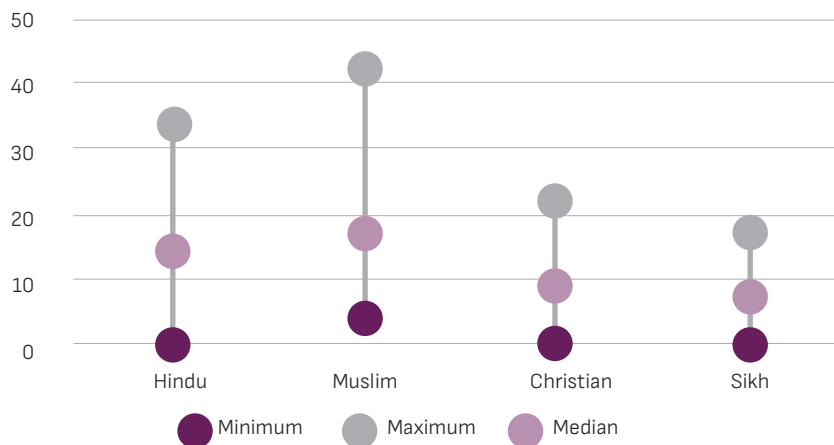
As might be expected, Bagalkot is among the 100 districts in the country with a high incidence of child marriage and teenage pregnancy. According to The National Family Health Survey (NFHS) 2016, one in every six marriages in the state is child marriage. Most child marriages are followed by teenage pregnancy, depriving the girls of basic education and self-reliant life. The survey also indicates that the average number of adolescent mothers in the 14 districts of the state is more than the national average of 7.9%, with Mysuru topping the list at 17%.

Source: <https://www.deccanherald.com/state/though-outlawed-child-marriage-717642.html>

Distribution of Child Marriages Across Religions

Among religious communities, the incidence of girl-child marriages is significantly higher among Hindus and Muslims than Christians and Sikhs. State-level data shows that the range is higher among Muslims than Hindus, as is the median value for states.ⁱⁱ

FIGURE 3 GIRL-CHILD MARRIAGES ACROSS RELIGION (IN PER CENT)



Source: Girl child marriage: Which districts fare the worst in India? The Livemint. 24 October 2017.

Child Marriage in National Family Health Survey

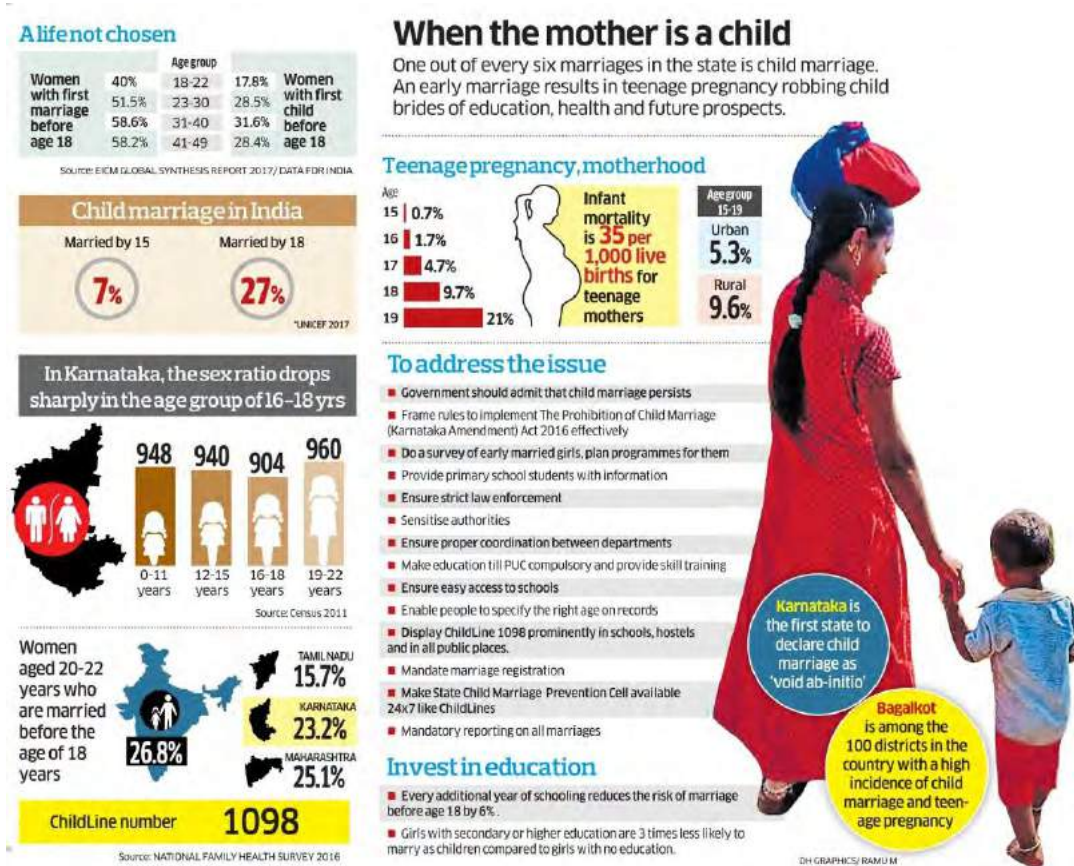
National Family Health Survey-4 (NFHS-4, 2015-6) data is more recent than what is available in Census 2011. However, unlike Census, which showed that at national level incidence of child marriage amongst girls aged 10<18 years was 4.5 per cent, NFHS-4 data can only highlight prevalence rates of child marriage and teenage pregnancy.

Highlighting a declining trend in child marriage, NFHS- 4 data shows the prevalence of child marriage amongst 15-19 olds was 11.9 per cent and 20-24 year olds was 26.8 per cent for girls in India. According to the findings by ICRW and UNICEF, analysing government data, a significant percentage of Indian women continue to marry between the ages of 15 and 17 years. In some districts, the trends show higher percentages of a younger cohort of women (as opposed to an older cohort of women) who are married before the age of 18 years.⁵

As per NFHS-4, child marriage prevalence in rural India is 14.1 per cent and in urban India, it is 6.9 per cent respectively for age group 15-19. For age group 20-24 year olds it is 31.5 per cent in rural areas and 17.5 in urban areas. Prevalence of below legal age marriage for single year age from 15 to 19 years highlight that prevalence of below legal age marriage increases as girls' transition through adolescence with lowest prevalence reported at age 15 (2.7 per cent) and highest at age 19 (20.5 per cent).

For those affected by child marriage, the violation of these rights continues throughout their lifespan. Children miss out on fundamental rights, such as right to play and right to an education. Girls, especially, become exposed to unplanned and early pregnancies. Girls being married to men several years older than them are also put at risk for physical and sexual abuse by men in the family. Abandonment of girls married at a young age by their husbands is not uncommon. Unskilled and unprepared, the affected are left to fend for themselves, most often with several children of their own they may have had at a young age. Thus, child marriage is the beginning of a cycle of violation of rights of children – both boys and girls – however girls have additional risks due to gender disparities.

ii The representation of girl child marriages across religious communities depicts the averaged percentage of marriages taking place within respective religious communities over the period of 10 years. For example, the data of Hindu community depicts an average maximum of girl-child marriage to be lying between 30-40 per cent in the period of last 10 years.



Child marriage not only most often hinders girls' education but also stops their education altogether in some cases. It can be only with great efforts that girls and women can re-start learning in their lives. Child marriage is also a highly discriminatory practice that puts girls to risk of lifelong inequality and hinders opportunities for empowerment.

"A reading of the National Policy and the National Plan of Action for Children reveals, quite astonishingly, that even though the Government of India realizes the dangers of early marriages, it is merely dishing out platitudes and has not taken any concrete steps to protect the girl child from marital rape, except enacting the Protection of Children from Sexual Offences Act, 2012."

Source: Justice Justice Madan B Lokur and Justice Deepak Gupta in Independent Thought vs. Union of India (WRIT PETITION (CIVIL) NO. 382 OF 2013)

Understanding Child Marriage in the Larger Context of Society

An understanding of child marriage cannot be separated from that of all the institutions which together make up a society based on multiple axes of social inequality and disparity. These axes of inequality and disparity are inextricably intertwined with social norms and patriarchy. Such norms generate a society with deeply entrenched forms of inequality and disparity which discourages basic dignity and respect among its members. Within feminist discourse, marriage is viewed as an institution for the control of women's labour, sexuality and reproduction. Child marriage is an extension of this institution. It is a product of patriarchy, cultural norms and the need to control sexuality and labour of young girls. However, since there is an element of child marriage among boys too, this too arises out of the need to control sexuality and sexual behaviour.

Key Drivers of Child Marriage Today

A study by ICRW and UNICEF analyses the prevalence and some key drivers of child marriage at the district level in India, using government data sources.⁶ It finds that child marriage persists across the country, with many northern states having the highest percentage of women married before the legal age. As per this study the following major causes can be identified:

- Female marriage squeeze, brought on by the surplus of young unmarried females in the marriage market because of the combination of several factors: declines in mortality, the low age at marriage of females, and cultural dictum that a bride be much younger than the groom.
- Strong cultural emphases on female modesty and chastity that induce parents to arrange a daughter's marriage at a very early age to avoid potential situations and incidences that inadvertently undermine these virtues and bring dishonour on the family. The extensive proliferation of communication technologies in the country, and the probability of children being exposed to movies and messages from an early age are seen as eroding the fabric of culture, customs and traditional family life and creating anxiety among parents and they see early marriage as a way to endure their daughter's physical safety and safeguarding of her chastity.
- Ensuring and continuing of the cultural practice of arranged marriages and marrying within the same caste. Such a practice has serious implications for the age at marriage of females, because it is the traditional and customary practice among many castes to marry off the daughter at puberty. Therefore, to a large extent, the cultural practices override educational and economic considerations.



The institution of marriage remains a viable social and cultural force in Indian society. Adolescent marriage continues to be the norm for females in many parts of the country.

Often it is said that child marriage and poverty are inter-related. In other words, it is the poor who marry off their children early.

RAJASTHAN: BJP CANDIDATE SAYS WILL ALLOW CHILD MARRIAGES IF ELECTED TO POWER, GETS APPLAUSE

Shocking as it may sound, a Bharatiya Janata Party (BJP) candidate has promised not to interfere in child marriages if elected to power. Shobha Chauhan, a BJP candidate from Sojat (reserved) seat in Pali district promised people that police will not interfere in child marriages if she wins.

Child marriage is a big problem in Rajasthan but political leaders are clearly supporting the social evil for political gains. It remains to be seen how the ruling party will respond to the irresponsible statement from one of its candidates.

Shobha Chauhan, wife of IAS officer Rajesh Chauhan, is contesting for a second time. While campaigning, she said once she is in power the people of the area won't face any harassment from the police over child marriage cases. The audience applauded the BJP candidate's shocking poll promise.

Source: <https://www.timesnownews.com/elections/rajasthan-election/article/rajasthan-bjp-candidate-says-will-allow-child-marriages-if-elected-to-power-gets-applause-watch-sojat-pali-district/323992>

A comparison of below legal age marriage among women aged between 15-19 and 20-24 years by wealth index of the household in the NFHS-4 shows that economic status of the households are negatively associated with the prevalence of child marriage across ages. Though significantly more child marriages were reported amongst 20-24-year-old women. Child marriage is more prevalent amongst women from bottom wealth tercile households for both age groups (16.6 per cent in the age 15-19 years and 41.5 per cent in the 20-24 years) and least prevalent amongst women from the top tercile households (5.4 per cent in the 15-19 years and 13.4 per cent in 20-24 years).

ICRW and UNICEF study has some interesting insights on this. Their study indicates that in poor and socially backward areas, as indicated by the large percentage of illiterate female population in the district, child labour is likely to be high and valued by poor families. As long as children contribute to the family income in any way, there is little reason or incentive for the parents to sacrifice the much-needed additional household income by marrying off their labour-able child.

On the other hand, the study reveals that in communities that are financially better off, indicated by the large percentage of women with at least 10 years of schooling, the practice of marrying off daughters at an early age is likely to be culture-driven, or for some non-economic purpose. “Thus, although the logic may be highly unseemly, the data indirectly appear to suggest the possibility that child labour offers protection against very early marriage for females”. The study conjectures that although young wives perform physical labour and services in the marital home, a benefit that clearly sustains the practice of child marriage in many families, the labour provided by the young bride to her in-laws is without monetary remuneration. This is unlike in poorer households, where economic deprivation and necessity requires every able-bodied family member, including children, to contribute to the household earnings through whatever means.

Wider the age gap between female and male partners in a child marriage makes it worse and harmful to girls. For example, it has been found that in West Bengal girls aged 12-16 are married to men who could be 30-35 of age. Whereas in Rajasthan the prevalent child marriage practice involves girls and boys of similar ages. In effect, both boys and girls are affected by child marriage norms in Rajasthan.

However, with the introduction of Kanyashree and Rupashree cash transfer schemes, in West Bengal, many parents allow their daughters to continue with their education. Girls, themselves, are becoming aspirational and not willing to marry older men that their parents want them to. This is leading to a backlash from parents as sometimes girls are eloping with boys of their own age. Child marriage, is a way to control sexuality of girls and exercise control over them.

The Law

The present law on child marriage, the Prohibition of Child Marriage Act (PCMA) has been in force since 2006. The PCMA provides for differentiated responses to trends within child marriage. It declares marriages involving kidnapping and trafficking as automatically null and void which treating all other marriages as valid and legal, but voidable. The underage parties have a right to annul their marriage within two years of attaining majority (or 18 years). Since PCMA does not mention age of consent, the parties involved can have sexual relationships. The Indian Penal Code sets the age of consent at 18 years in Section 375. But it puts in an exception (Exception 2) by which the husband of a married girl child between 15 and 18 years of age, can have non-consensual sexual intercourse with her, without being penalized under the IPC. The Prohibition of Sexual Offence (POCSO) Act, which sets the age of consent at 18 years and therefore criminalises all sexual activity below this age, further complicated the issue.

The child marriage under PCMA, if not prevented is legal but voidable, which means children in the marriage are legally married. Karnataka has inserted sub-Section (1A) in Section 3 of the PCMA (on obtaining the assent of the President on 20th April, 2017) declaring that henceforth every child marriage that is solemnised is *void ab initio*. The Government of India is proposing the same for the whole country.⁷

Sustainable Development Goals:

1. Goal 4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.
2. Goal 5. Achieve gender equality and empower all women and girls

FROM 'VOIDABLE', CHILD MARRIAGE TO TURN ILLEGAL

To address the inconsistency, the Union women and child development ministry has decided to amend the law and make child marriage 'void ab initio' or invalid from the outset.

Moushumi Das Gupta

Hindustan Times, New Delhi

The Centre is moving ahead with a proposal to amend an existing law so as to make all future child marriages in the country invalid from the outset, according to two senior government officials familiar with the matter who asked not to be identified. Currently, child marriages are valid, but can be annulled on request.

The legal age for marriage in India is 18 for a woman and 21 for a man.

The current law — Prohibition of Child Marriage Act, 2006 — recognises child marriage as valid but "voidable" at the option of the minor involved. It is the rare under-age bride that come forward to complain or seek annulment, according to the officials.

To address the inconsistency, the Union women and child development (WCD) ministry has decided to amend the law and make child marriage "void ab initio" or invalid from the outset.

"The proposal has been approved by WCD minister Maneka Gandhi. We have sent it to the law ministry for vetting. Once the law ministry clears it, we will move the cabinet," said one of the senior ministry officials quoted above.

The Act makes contracting a marriage by a man who is over 18 years of age with a woman under 18 years, a cognizable and non-bailable offence punishable with imprisonment of two years and a fine of Rs one lakh, but recognizes the union as valid.

Last year, Karnataka became the first state in the country to amend the central act to make child marriage "void ab initio."

The Supreme Court cited the Karnataka example while giving an order last October criminalising sexual relations between a man and his minor wife.

Jayna Kothari, executive director, Centre for Law & Policy Research, who, as the counsel for Bengaluru based Child Rights Trust argued for making child marriage void ab initio in Karnataka said that the proposed amendment is long overdue.

"Child marriage is rampant here because the law is completely toothless. It says that child marriage can be nullified by the minor contracting party but it's impractical to expect a minor to come forward and complain. The minor's family also hardly comes forward to get the marriage annulled. The marriage becomes a kind of *fait accompli* (done deal)," Kothari explained.

Based on a petition by Independent Thought,⁸ the Supreme Court order by Justices Madan B. Lokur and Deepak Gupta attempted to resolve the anomalies through their judgement by reading down the Exception 2 to 375 and raising 15 to 18 years because the distinction between what constitutes rape of a child in marriage and not in marriage is arbitrary and not the best interest of the child. What is also important is that they have recognized that child marriage and child trafficking are closely linked to each other. It is important to note that both the judges have repeatedly said that the order very clearly stated that this must not be interpreted as a judgement addressing marital rape in general. This is what they said:

"Strangely, while prohibiting a child marriage and criminalizing it, a child marriage has not been declared void and what is worse, sexual intercourse within a child marriage is not rape under the IPC even though it is a punishable offence under the Protection of Children from Sexual Offences Act, 2012. The issue before us is limited but one of considerable public importance – whether sexual intercourse between a man and his wife being a girl between 15 and 18 years of age is rape? Exception 2 to Section 375 of the Indian Penal Code, 1860 (the IPC) answers this in the negative, but in our opinion sexual intercourse with a girl below 18 years of age is rape regardless of whether she is married or not. The exception carved out in the IPC creates an unnecessary and artificial distinction between a married girl child and an unmarried girl child and has no rational nexus with any unclear objective sought to be achieved".

While this judgement resolved the issue of sex in child marriage by criminalising it, the other issues of legality of the marriage has remained which Government of India is now attempting to resolve by following the example of Karnataka where, as explained above, every child marriage that is solemnised is void ab initio.

State Rules

The following states have formulated rules:

- Andaman and Nicobar Islands, 2007
- Andhra Pradesh, 2012
- Bihar, 2019
- Chandigarh, 2015
- Chhattisgarh, 2007
- Dadra Nagar Haveli, 2008
- Mizoram, 2019
- Gujarat, 2008
- Haryana, 2011
- Jharkhand 2011
- Karnataka, 2008
- Manipur 2007
- Maharashtra 2007
- Madhya Pradesh, 2008
- Odisha 2009
- Puducherry, 2009
- Tamil Nadu, 2009
- West Bengal 2000

Because of the action by government agencies as well as due to work of civil society there is a definite increase in awareness about the illegality of child marriages. As data shows, there is also some increase in the age at which girls are being married off in most states. At the same time, parents are finding ways to subvert the law to perform child marriages. For example, it has been found that the time gap between arranging the marriage and completing the wedding ceremonies is very little in order to avoid drawing attention of the law enforcement agencies, whereas traditionally there used to be considerable gap between the two events. Often the wedding ceremonies are conducted in unknown locations away from the villages to avoid being noticed. Child marriages continue to receive patronage from politicians and election candidates. Politicians attending child marriages continue to be reported.

TABLE 1: INCIDENCE OF CHILD MARRIAGE 2006-2016

NCRB Data	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Number of Cases	99	96	104	3	60	113	169	222	280	293	326	395
Charge sheeting Rate (in per cent)	88.5	86.3	93.3	88.2	94.0	95.3	94.7	95.1	96.1	89.6	84.6	84.8
Pendency rate (in per cent)	90.4	85.4	84.5	81.9	86.3	87.4	88.9	91.7	85.8	91.0	93.4	90.9
Conviction Rate (in per cent)	34.1	34.4	25.3	28.6	14.8	35.3	18.4	10.2	14.6	21.4	14.7	7.5

Source: Crime in India Reports, 2006-2017. NCRB.

TABLE 2: CASES REPORTED FOR PCMA AND KIDNAPPING & ABDUCTION TO COMPEL FOR MARRIAGE, 2016-17

Number of Cases Reported Under PCMA and Section 366 of IPC	2016	2017
PCMA	326	395
Kidnapping and Abduction for Marriage	16636	12124

Source: Crime in India Reports, 2006-2017. NCRB.

The above given data of PCMA and Section 366 of IPC (i.e., Kidnapping & Abduction of child to compel them into marriage) if read in a dialectical manner highlights the different outlook of the complainant (majorly the guardians) towards different circumstances under which forced child marriage takes place. The stark differences in the numbers might reflect on the varying degree of social stigma attached to elopement of the child relative to child being forced to marriage by the guardian themselves. The numbers might also reveal attitude of the guardians towards decisions taken by the children, in this case of elopement, and as argued in the chapter on 'Child Sexual Abuse', a firm denial of 'romantic' relationship of children by their guardians.

One of the challenges with the implementation of PCMA is the diverse interpretation of the law by different high courts.⁹ This is because there remains a great amount of ambiguity on the applicability of PCMA to muslim marriages. Muslim Personal Laws allows muslim girls to be married upon attainment of puberty.¹⁰ As a result, despite the growing awareness against child marriages in West Bengal, the documents maintained by some of the Marriage Registrars do not record the age of the girls. Instead they record whether the girls has attained puberty. In fact, there is no space for recording girls age in their documents. The courts too have been ambiguous and have taken divergent views on this matter.

COURTS STILL CONFUSED ABOUT LEGAL AGE OF MARRIAGE?

MAITREYEE BORUAH, TNN | JUL 28, 2013, 12.00 AM IST

A large number of minor girls are voluntarily stepping into matrimony. Going by the law in India, the marriageable age of a girl is 18. While that rule is routinely flouted in communities in which child marriage is prevalent, what if a minor girl voluntarily decides to marry the person of her choice and stay with him? In the wake of a large number of girls opting to marry before the set legal age, the Supreme Court recently observed that it is difficult to arrive at a "straitjacket formula on marriageable age of girls to fit every case", and experts feel that the complex issue needs to be addressed soon.

The Supreme Court's comment came after a National Commission for Women (NCW) plea about Delhi High Court and Andhra Pradesh High Court rulings allowing minor girls to remain married, as they acknowledged that they had eloped voluntarily with their beaus.

Source: <https://timesofindia.indiatimes.com/life-style/relationships/love-sex/Courts-still-confused-about-legal-age-of-marriage/articleshow/21333081.cms>

HAQ's own interventions in West Bengal (implemented in partnership with Jabala Action Research Organisation) indicate that even though it is possible to engage with religious functionaries who introduced innovative method of combining calls to the people to join *namaz* with messages raising awareness on child marriage. They also started requiring the age of girl to be recorded on the *nikahnamas*.

According to, Sub clause (iii) of Section 5 of the Hindu Marriage Act, the bridegroom must have completed the age of 21 years and the bride the age of 18 years at the time of marriage. Prior to 1978, marriage below the prescribed ages could be solemnised with the consent of the guardian. When the minimum age was raised to 18 years for the girls and 21 years for the boys (earlier it was 15 years and 18 years respectively) this provision became infructuous as guardianship is not required in case of a person aged 18 years. So, the clause was deleted.¹¹ However, a marriage that could not be prevented from being solemnised is not *void ab initio*, and hence legal. Section 13 of the Hindu Marriage Act deals with the circumstances in which a party to the marriage may seek dissolution by a decree for divorce in case her marriage before the age of 18 years.

However, courts at different times have also held that CMPA over rides the personal laws.^{iii 12} Prohibition of Child Marriage Act, 2006 under section 3 discusses annulment and voidability.¹³

Rajasthan leads in efforts for annulment of child marriage by girls (boys as well in some cases) and the civil society. Several groups assist girls in accessing legal help in filing their cases for annulment. Close to 40 girls are reported to have got their child marriages annulled in the state till 2018.

Where boys are married off early too, as in Rajasthan, it was found that boys too felt pressurised to drop out of school, and start earning for their families leading to discontinuation of their education and taking up jobs at young age.¹⁴ Thus, they too lost their childhood. But while there are schemes for the girl children, there are none for the boys in the same circumstances.

iii The annulment of child marriage can be possible within 2 years after the child who was the party to the marriage has attained maturity. Children can file a petition for voidability or annulment of marriage. If the petitioner is minor, as per PCMA, then in such a case petition can be filled by the guardian or the next best friend of minor (whose age is more than 18-years). The district court can grant nullity of marriage. The district court includes family court and civil court and principle civil court of original jurisdiction as well as any other civil court specified by the State Government.

Prevention of Child Marriage

Over the years, child marriage typically addressed either as a women's issue or a health and reproductive rights issue. In comparison, there has been a very limited recognition of child marriage as a violation of rights. It is only begun to be addressed as a child protection issue recently. Even now, child marriage is part of the Women Development vertical in Ministry of Women and Child Development of the Government of India, and not the Child Protection Portfolio.

Globally, there has been an increasing interest in addressing this issue as a child rights violation. For example, announcing a joint initiative of UNICEF and UNFPA, Anthony Lake, UNICEF Executive Director, said, "the world has awakened to the damage child marriage causes to the individual girls, to their future children, and to their societies. This new global programme will help drive action to reach the girls at greatest risk – and help more girls and young women realise their right to dictate their own destinies. This is critical now because if current trends continue, the number of girls and women married as children will reach nearly one billion by 2030 – one billion childhoods lost, one billion futures blighted."¹⁵

Thus, there continues to be an ongoing debate between women's rights activists and child rights activists on the appropriate approach regarding addressing child marriage. The women's rights groups often feel that those working on child rights and child protection do not adequately recognise young people's agency, right to choose and sexuality. Taking note of the complexities surrounding child marriage, the approach adopted by HAQ: Centre for Child Rights (HAQ) and some of other groups in country, is framed within the larger context of violation of human rights. Recognising that child marriage leads to a cycle of human rights violation which begins from an early age, affects whole life span - HAQ rejects the view that children and minors only require 'protection', and may subsequently enjoy exercising their rights as adults. Rights have to be emphasised from the very beginning of a person's life.

An understanding of child marriage cannot be separated from all the other institutions which together make up a society, often based on multiple axes of social inequality and disparity. These inequalities and disparities are deeply intertwined with socio-cultural norms and patriarchy. In this context, it is not easy to bring about a change.

Change has its own risks, sometimes even bringing some pain to people involved. For example, when a child marriage is stopped, and the girl continues in the same disturbed family, which may even be angry because of the situation it has to deal with following the stopping of the, making the life of the girl difficult. Efforts need to be made to minimise the discomfort families undergo, and the trauma that girls themselves go through during an intervention. If marriages can be prevented, families supported, girls allowed to continue in education and is allowed to make life's choices, there can be some positive changes for the future in their lives. Successful interventions must therefore adopt a wider approach towards prevention of child marriage. It is not enough to only target child marriages. Appropriate intervention demands large-scale structural efforts aimed at education, health, and poverty reduction to intensify outcomes in the prevention of child marriage and ensuring child protection.

What is required is sustained intervention from a multi-pronged approach, identifying and, to the extent possible, addressing the related issues.¹⁶ Any intervention model to be effective must have the ability to function within and across a comprehensive structure of multidimensional programmes and activities related to child protection and child rights.

'Centricity' of marriage: Over the years, some communities have understood that child marriage is prohibited by law. Few others have recognised the fall-outs of child marriage on girls. Hence, child marriages maybe postponed or stopped till the girls turn 18 years because of request from the girls themselves or because of intervention from outside. Many a times, if the marriage has already taken place, '*gauna*' (sending of girl to the in-laws home) is postponed. However, the importance of marriage as an institution, which is essential for girls and boys at an early age, remains. Families, and in most cases the girls themselves, continue to believe that there cannot be a life without a marriage. Hence,

while some may negotiate for being able to continue education after marriage, they agree to being married soon after they turn 18 years. There is not enough attention given to ensuring that a girl is financially independent before being married off.

The girl child cash transfer schemes such as Kanyashree and Rupashree, reinforce stereotypes, instead of breaking them. So while they enable or indeed, the cash in the bank postpones marriage and keeps them in school longer, it is found that girls marry as soon as they turn 18 years and receive the money. It is most often used to pay their dowry.

Protection vs. Protectionist: For many parents, child marriage itself emerges as a way of protecting their girl children. However, our experience with implementing interventions in such a setting shows that it is important to work with this notion in order to turn this argument on its head. Interventions need to demonstrate to the communities how girls may in fact be left unprotected by child marriage. Thus, a dialogue is required to clarify the difference between these two frameworks. At the same time there is need to acknowledge the agency of children in exercising their rights. Instead of setting restrictions, it is important to facilitate the choices and decisions children make at different points and within different worldviews in their lives.

Child Rights vs. Women's Rights: Child marriage has always been typically addressed either as a women's issue or a health and reproductive rights issue. On the other hand, there is very limited recognition of child marriage as a violation of rights. Thus, there continues to be an ongoing debate between women's rights activists and child rights activists on the appropriate approach towards targeting child marriage. Several women's rights groups insist that child rights groups are rigid and are not recognising agency of young people, especially adolescent girls and their right to sexuality. In working to prohibit child marriages they are taking away the choice of young people to be together. Indeed, these women's rights groups believe that child rights activists are being prescriptive and 'protectionist'.

Child rights groups believe that it is high time that child marriage is seen as a violation of basic rights of children, especially right to protection, ensuring safety and security. This is based on extensive studies on impacts of child marriage and what children themselves have to say about human rights principles of indivisibility of rights, but with right to protection of children from under-age marriage being the centre-piece. It is also based on the principle of best interest (given the huge body of evidence on the impact of child marriage in India and globally) and the premise that children's agency must be recognised, age appropriate information provided to them and their participation sought.

The need to prevent child marriages is also located within the recognition of addressing sexuality and sexual needs of children and adolescents, while addressing appropriate and responsible sexual behaviour. The reality is that adolescents are known to elope and marry to legalise their 'sexual activity'. Criminalising them is not the solution.

Hence, while recognising that consensual sexual activity between children must not be criminalised, child rights groups also address the impacts of child marriage and work to prevent it – as a cultural or normative practice by discouraging children from getting married on their own. Child rights groups also hold adults who continue to marry off children accountable.

Conclusion

Despite growing recognition of the 'evils' of child marriage it remains a reality. In fact, there are newer challenges to reckon with as parents find more 'innovative' ways to bypass the law and children themselves seek marriage as their solution. Under the circumstances, the solution lies only in a multi-pronged approach to address the problem. Access to schools for children and keeping them there, financial stability for families, cannot be ignored if child marriage has to be tackled in a sustainable manner.

Endnotes

- 1 <https://unicef.in/Whatwedo/30/Child-Marriage> Last accessed on 17 October 2019
- 2 Mehra, Madhu & Nandy, Amrita. 2019. *Why Girls Run Away to Marry: Adolescent Realities and Socio-Legal Responses in India*. Partners for Law in Development, Delhi. page 2.
- 3 <https://www.livemint.com/Politics/B4wwK9cEayKf5OveihQWr0/Girl-child-marriage-Which-districts-fare-the-worst-in-India.html> Last accessed on 17 October 2019
- 4 Srinivasan, Padmavathi; Khan, Nizamuddin; Verma, Ravi; Giusti, Dora; Theis, Joachim & Chakraborty, Supriti. (2015). District-level study on child marriage in India: What do we know about the prevalence, trends and patterns? New Delhi, India: International Center for Research on Women
- 5 Srinivasan, Padmavathi; Khan, Nizamuddin; Verma, Ravi; Giusti, Dora; Theis, Joachim & Chakraborty, Supriti. (2015). District-level study on child marriage in India: What do we know about the prevalence, trends and patterns? New Delhi, India: International Center for Research on Women
- 6 Srinivasan, Padmavathi; Khan, Nizamuddin; Verma, Ravi; Giusti, Dora; Theis, Joachim & Chakraborty, Supriti. (2015). District-level study on child marriage in India: What do we know about the prevalence, trends and patterns? New Delhi, India: International Center for Research on Women
- 7 Dhingra, Sanyan. October 30 2019. Age of Marriage for Men could soon be reduced to 18. *The Print*. <https://theprint.in/india/governance/age-of-marriage-for-men-could-soon-be-reduced-to-18/313100/>. Last accessed on 30 October 2019.
- 8 WRIT PETITION (CIVIL) NO. 382 OF 2013
- 9 HAQ: Centre for Child Rights (2014). Report of "COME TOGETHER" - National Consultation on Prevention of Child Marriage.
- 10 Mahapatra, Dhananjay. 2019. SC to study if under-18 Muslim girl can marry on attaining puberty. http://timesofindia.indiatimes.com/articleshow/71072845.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst. Last accessed on 20 September 2019
- 11 Vandana. 2017. Child Marriage under Hindu Personal Law: Factum Valet or An Issue For Protection of Human Rights of Women. *ILI Law Review*. Summer Issue Volume I, 2017.
- 12 This has been discussed in detail in Human Rights Law Network. 2017. *Child Marriage: The Worst Form of Slavery*. <https://hrln.org/wp-content/uploads/2018/03/CHILD-MARRIAGE-FINAL-BOOK.pdf>. Last accessed on. 20 September 2019
- 13 The annulment of child marriage can be possible within 2 years after the child who was a party to the marriage has attained majority, Children can file a petition for voidability or annulment of marriage, If the petitioner is minor as per PCMA, then in such case petitioner can be filled by guardian or the next best friend of minor (whose age is more than 18 years. The district court can grant nullity of marriage. The district court includes family court and civil court and principal civil court of original jurisdiction, and any other civil court specified by the state government.
- 14 Iqbal, Mohammad. June 16 2018. In Rajasthan: A Spurt in annulled Child Marriages. *The Hindu*. Last Accessed on 30 October 2019.
- 15 Office of the Secretary General's Envoy to Youth. 2016. New UN initiative aims to protect millions of girls from child marriage. <https://www.un.org/youthenvoy/2016/03/new-un-initiative-aims-to-protect-millions-of-girls-from-child-marriage/>. Last Accessed on 30 October 2019.
- 16 For detailed discussion, refer to HAQ's study on 'Prevention of Child Marriage: Impact on Girls', 2016. <http://haqrc.org/publication/prevention-child-marriage-impact-girls/>

14

CHILDREN GROWING UP IN THE SHADOW OF CONFLICT

Photo: Dipayan Bhattacharjee





Introduction

Around the world, increasing aspirations and diminishing resources is leading to conflict, fuelled by populist political ambitions that play on insecurities around ethnic or religious differences. India's myriad security challenges, both internal and external, have also been channelled toward a violent nationalism that promotes militarisation and armed resistance.

Yet, all too often, it is children that become victims in a situation of armed conflict.ⁱ They can be injured or killed as bystanders, or as in Aatif's case, held hostage during an armed exchange.

The tragedy of children who grow up in the shadow of conflict is that they are denied access to the most basic services and protection. They can be recruited into combat as child soldiers, including to act as informers, porters or cooks. Education is impacted if neither teachers or their students are safe to attend to lessons, and schools can be targeted by armed groups or used by security forces as barracks. Living through a conflict situation inevitably adversely affects children's access to basic services including health and food. Many suffer psychological trauma. And many become victims of sexual abuse. They are thus caught in a web of violence, illiteracy, neglect and fear with no hope for the future.

"Please let my son go. He is innocent," Shareefa Bano called out to the militants who were holding her 12-year-old son hostage during a gunfight with the military in Jammu and Kashmir in March 2019. "I used to feed you people. Have some mercy."¹

Shareefa Bano plea went unheeded. Her son, Aatif Ahmed Mir, died in the face-off. No one is willing to accept responsibility. Soldiers blamed the militants for using a child as human shield. Many Kashmiris said that the soldiers could have withdrawn to save the child.

ⁱ The United Nations Convention on the Rights of the Child (commonly abbreviated as the CRC or UNCRC) defines a child as any human being under the age of 18. Those under 18 are considered a child in Indian law.

"When adults go to war, it is the children who are affected the most and bear the scars throughout their life cycle. To protect children from the impact of armed conflict, the United Nations created the mandate of the Special Representative of the Secretary General in 1996. Since then the protection, rights and well-being of children affected by armed conflict have come to occupy an important priority in the political agenda of the international community and a considerable body of international norms and standards has progressively evolved providing a framework for their protection. The Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Geneva Convention, 1949, and the 1977 Protocols Additional to the Geneva Convention, the International Labour Office (ILO) Convention 182 on the Elimination of the Worst Forms of Child Labour, the Rome Statute of the International Criminal Court, as well as Security Council resolutions 1261(1999), 1314(2000), 1379(2001) and 1460(2003) have today come to provide a strong and significant body of norms and standards for the protection of children from the impact of armed conflict."

Source: Olara A. Otunnu, Special Representative of the Secretary-General for children and armed conflict. 22 April 2003 <https://www.unicef.org/emergencies/files/HSNBook.pdf>

The recruitment and use of children by an array of non-state armed groups in various states in India has been a matter of concern for a number of years. According to the Government of India, the states worst affected by what it terms Left Wing Extremism (LWE) are Chhattisgarh, Jharkhand, Odisha and Bihar.ⁱⁱ The LWE problem also exists in certain pockets of Maharashtra, West Bengal, Andhra Pradesh (AP), Madhya Pradesh (MP) and Uttar Pradesh (UP). Organisations linked with LWE are active in around 10 States of India.²

To protect children from the impact of armed conflict, the United Nations created the mandate of the Special Representative of the Secretary General in 1996. Since then the protection, rights and well-being of children affected by armed conflict have come to occupy an important priority in the political agenda of the international community and a considerable body of international norms and standards has progressively evolved providing a framework for their protection.

In 2005, the United Nations Security Council requested in the Resolution 1612 that the UN Secretary-General should establish a monitoring and reporting mechanism, managed by country-based task forces co-led by UNICEF and the highest UN representative in the country, to provide timely and reliable information on six grave children's rights violations:³ killing or maiming of children; recruitment or use of children by armed forces or armed groups; attacks on schools or hospitals; rape or other sexual violence against children; abduction of children; and denial of humanitarian access to children.⁴



As per the Juvenile Justice (Care and Protection of Children) Act 2015, children who are victims of or affected by any armed conflict, civil unrest or natural calamity are children in need of care and protection (Section 2 (14) (xi)). This is a very big step taken by the Government of India in not just recognising the vulnerability of such children, but also the need to protect their rights and entitlements.

The Government of India uses terms such as insurgency, extremism, civil strife or civil unrest and not internal armed conflict. It formally recognises internal security challenges in the country as those linked to: Terrorism in the hinterland of the country; Left Wing Extremism in certain areas; Cross-Border terrorism in Jammu & Kashmir; and Insurgency in the North Eastern States.

Source: Ministry of Home Affairs. Government of India. Annual Report 2017-2018,

ii The Indian Government's use of the term 'Left Wing Extremists' is open to interpretation since what constitutes 'extremism' is not clearly defined. We use 'left wing armed groups' as an umbrella term to denote a range of left-leaning non-state armed groups operating in the Indian states of Chhattisgarh, Jharkhand, Odisha, Bihar, West Bengal, AP, Telangana, Maharashtra, MP and UP. The terms 'Maoists' is used synonymously with CPI (Maoists) and other non-state armed groups are referred to by name.

However, some international civilian protections are treated as customary law and Indian authorities are expected to comply with such international standards. In India, such circumstances exist due to insurgencies in Jammu and Kashmir state as well in several parts of India's northeast. In both Kashmir and the North-East, there are ongoing separatist campaigns, with some violent groups based across borders. In addition, there is an ongoing armed battle between security forces and armed Maoist groups in central India, which has more domestic demands around social justice.

Children in these areas have experienced all of the grave abuses listed by the United Nations. While Indian authorities collate data on deaths and injuries in armed conflict, there is no disaggregated information based on gender or age, and thus impossible to determine how many children have become casualties due to the violence.⁵ Anecdotal evidence, however, suggests that hundreds of children may have been killed, maimed, injured or raped due to armed conflict over the last two decades. Many have been denied proper education and health, their futures stifled.

The conflict-induced factors further aggravate the problem of educational poverty in these areas. Although these factors affect children from all social groups and across genders at each level of education, their effects are particularly severe on the enrolment of children of Scheduled Tribe (ST) communities who are more likely to drop out after the completion of primary education. In these areas, boys are more likely to remain out of school due to forced migration to other places in search of livelihoods, while girls are more vulnerable to drop out from school due to safety and security issues. The exclusion of children from the education system increases their vulnerability of getting enmeshed in the conflict trap. Thus, there is a need to ensure that schools remain safe learning zones.

Source: Kumar, Satish. Education and Civil Strife in Chhattisgarh, *Economic and Political Weekly*, Vol.52, issue 36, 9/9/2017

Jammu and Kashmir

The ongoing conflict in Jammu and Kashmir state is witnessing a spike in violence.⁶ There are regular street protests, many of them violent. At the same time, militant attacks have been on the rise including, in 2019, a suicide bombing targeting a security forces convoy in Pulwama.⁷ Security forces have launched operations against militants as well as to curb protests. Children have become victims in the violence and human rights violations.

For instance, children have joined street protests in Jammu and Kashmir, often throwing stones at government forces, placing them at risk of injury as security forces use pellets or live ammunition to contain protesters. Several have been detained under the Public Safety Act despite families and lawyers providing evidence that they are not yet adults.⁸ Children, both protesters and bystanders, have been killed or injured both in stone throwing, but much more frequently due to excessive and indiscriminate use of force by government troops.

PULWAMA ATTACK: INDIA MOURNS KASHMIR DEAD

In November 2018, Heeba Jan, a toddler suffered injuries to her eye as security forces fired shotgun pellets to contain protests after a gunfight with militants in Shopian district. When security forces first fired teargas to disperse the crowds, Heeba was at home with her mother and older brother. The children started coughing and retching, so their mother tried to take them outside to escape the teargas. All three were caught in the crowd; both Heeba and her mother were injured.

Source: Injured baby refuels India Kashmir pellet gun debate. BBC News. November 28, 2019.

Human rights activists have repeatedly criticised the indiscriminate use of shotgun pellets. In January 2018, the Jammu and Kashmir chief minister told the state legislative assembly that 18 people were killed and 6,221 injured by pellet guns between July 2016 to February 2017.⁹ In 2016, the Supreme Court of India sought assurances from the government "that pellet guns will not be used indiscriminately or excessively in the State, and will be resorted to after proper application of mind."¹⁰ These strictures, activists say, have been ignored.¹¹

The protests, and calls for strikes, often lead to shutting down of schools, as well as delays in exams.¹² Schools have also been targeted with several burned down.¹³ The authorities have started a new campaign to restore proper access to education.¹⁴ Adil Ahmad Dar, the suicide bomber in Pulwama, had dropped out of school, started taking part in protests and was injured in 2016, and later joined the Pakistan-based militant group, Jaish-e-Mohammad.¹⁵

With the recent increase in armed violence, children have been recruited into combat in Jammu and Kashmir.¹⁶ Burhan Muzaffar Wani joined the Kashmiri militant group Hizbul Mujahideen in 2010 at age 15 and soon gained popularity over social media inspiring other children to become combatants. Wani was killed in 2016 leading to widespread protests and a severe security crackdown in response.¹⁷ Inspired by Wani, and angered by human rights violations by the military, security experts believe that a number of young Kashmiris, including children, moved towards becoming militants.¹⁸

In June 2019, three men were sentenced to life in prison after being convicted of raping and killing an eight-year-old girl in Kathua as a message to Muslims in the area. Three policemen were sentenced to five years in prison for abetment and destroying evidence.¹⁹

Maoist Conflict

Children have also been caught up in conflict between armed Maoist groups and security forces across several districts in the Central and Eastern India. While the Communist Party of India (Maoist) is the best known, there are a number of other splinter groups as well. The Indian authorities describe them as Left-Wing Extremists (LWE), but the media refers to them as Naxals, Naxalites or Maoists.

The actual intensity and extent of LWE 'influence' seems to be unclear. According to Government sources, there has been a perceptible decline in the area of operations and impact of Maoism in India over the last few years. India's former Home Minister, Rajnath Singh, announced on the 17 March 2017 in the Lok Sabha, that the number of districts affected by LWE has been reduced from 106 to 68. On 29 August 2017, he again informed the Lok Sabha that compared to 2010, there was a decline of 53 per cent in the number of violent incidents and 72 per cent in resultant deaths in 2016 and the trend continued in 2017. Singh said that 2017's overall situation indicated a declining trend and the number of violent incidents had reduced by 25.6 per cent as compared to the corresponding period in 2016.²⁰ However, according to a document put out by the government in 2016, the areas to which LWE presence was spreading was increasing even beyond the listed states.ⁱⁱⁱ

While the violence has declined slightly since 2018, HAQ: Centre for Child Rights has previously reported on the impact of the Maoist conflict on children in Jharkhand and Chhattisgarh including killings and sexual abuse.²¹

Several children were among those killed in April 2018 in what the police said was an armed encounter with a group of Maoists.²² Children have also witnessed or become victims during security forces operations. It is important to note that dalits and adivasis are particularly impacted in the Maoist conflict. Social justice and humanitarian interventions by state authorities to support marginalised communities are adversely impacted during conflict, and children are vulnerable to denial of these services including access to health.

Maoist groups continue to recruit children into combat, particularly in Jharkhand state, where Maoist abductions are a particular scourge. According to media reports, Jharkhand police estimate that over a 1000 children may have been abducted or volunteered to join the armed groups as fighters or to serve as informers, porters, cooks or messengers.²³

iii Note: In 2016 Government of India had also said: "There is major improvement in Andhra Pradesh, which was considered severely affected earlier. The CPI(Maoist) are making forays into Southern States of Kerala, Karnataka and Tamil Nadu and planning to link up the Western Ghats to the Eastern Ghats through these states. The CPI(Maoist) are planning to expand their area of activities and carve out a base for themselves in the tri-junction of Karnataka, Kerala and Tamil Nadu. They are attempting incursions into Assam and Arunachal Pradesh, which has serious long-term strategic implications." For further reading: Ministry of Home Affairs, Government of India. http://mha.nic.in/sites/upload_files/mha/files/LWE_FAQS_22012016.pdf Accessed on 25 October 2019.

In May 2018, the UN Secretary General submitted findings to the Security Council saying that there are continued “reports of the recruitment and use of children” in Chhattisgarh and Jharkhand, and noted ominously that, “Naxalites reportedly resorted to the use of a lottery system to conscript children in Jharkhand.”²⁴

In January 2016, 16-year-old Tara, who was preparing to join college in Lohardaga town, was waylaid by Maoists in Kerar village. “Someone told me my daughter was being taken away by Maoists,” says her father. “I ran as fast as I could and fell at their feet. I said nothing but cried with folded hands.”

A marginal farmer, the Maoists told him they would transform his child into a fierce comrade. Eight months later, he was summoned to the Peshrar forest in Lohardaga. Tara was pregnant, the Maoists informed him. In front of him, Nakul Yadav got one of his squad members to marry her. They then ordered her father to take Tara home. She gave birth to a boy. Her ‘husband’ has not visited her even once. Tara hardly speaks, mostly staring blankly into the distance.

Jitamani Devi, a widow in Lohardaga’s Chainpur village, has not seen her daughter Sunaina since the Maoists abducted her last year. “I don’t know if she is alive,” Jitamani wails. Two of her sons moved to Uttar Pradesh, to work in a brick kiln and stay away from the Maoist dragnet. The youngest son, 9, has been shifted to Ranchi, where an NGO has admitted him into a government residential school. “I have asked my children not to return,” says the mother.

Source: Amitabh Srivastava. A Shocking Surge. India Today. 28 April 2017.

Schools have come under attack. While courts and the central government have ordered security forces not to use schools as barracks, they are still sometimes used as temporary shelters. The Maoists, who used to target schools as symbols of the state, have also reduced such attacks. However, the Maoists torched a tent at a school in Bihar ahead of the 2019 elections to press their call for a poll boycott.²⁵

In June, a school in Jagargunda, in Chhattisgarh’s Sukma district opened 13 years after it was demolished by Naxals in 2006.²⁶ This was among several schools that were destroyed during a state-sponsored vigilante movement called *Salwa Judum*, an effort to counter the Maoists, which displaced tens of thousands of villagers, including children that were forced to flee the violence.²⁷

But the violence continues its deadly impact on children. On June 29, 2019, a vehicle carrying school children was caught in the crossfire during a stand-off between security forces and the Maoists in Chhattisgarh leading to the death of 15-year-old Zibbo Telam.²⁸

As a measure of counter-insurgency, the Government, especially in Chhattisgarh has created armed vigilante groups of people in ‘movements’ like *Salwa Judum* to fight against Maoists in 2005.²⁹ Many of those recruited and given arms were below the age of 18 years.

The Supreme Court of India ordered the Chhattisgarh Government to ban the *Salwa Judum* in 2011 and take back the arms.³⁰ Nandini Sundar has traced the impact of these actions both by the State as well as the ‘fringe groups’ that have emerged following the disbanding of *Salwa Judum* in her book *The Burning Forest*. Special Police Officers (SPOs) were created as a part of this endeavour. Some of the SPOs seem to have been absorbed in the regular police force while others continue to be members of the various new vigilante organisations that have sprung up with the help of the police forces.³¹ Thus, in 2015-16, in Chhattisgarh alone groups like the *Samajik Ekta Manch* (dissolved in April 2016), *Naxal Peedith Sangharsh Samiti* and *Bastar Sangharsh Samiti* came up, ostensibly to counter Maoism but in reality unleashing waves of terror and oppression on the people.³²

Sundar continues to narrate that “the war [against the people] has both receded and redoubled in intensity, naming and renaming itself—*Salwa Judum*, Operation Green Hunt, localised operations like Operation *Maad*, *Kilam and Podku*, or Mission 2016”.³³ Various reports have highlighted the recruitment of child soldiers by the vigilante groups like *Salwa Judum*.³⁴

Acute poverty, discrimination, exploitation, corruption and a lack of safe access to education, health and social welfare has characterised the lives of communities in many areas of rural India, helping left wing armed groups fuel hostility towards the state. In turn, security forces engaged in counter-insurgency operations have been accused of a range of human rights abuses including arbitrary arrest and torture of villagers suspected of supporting left wing armed groups, which has only exacerbated the situation.

Source: Lost Childhood, Child Soldiers International and HAQ: Centre for Child Rights.2016.



Source: <https://www.indiatoday.in/magazine/msn-it/story/20170508-child-soldiers-maoists-jharkhand-986259-2017-04-28>

Conflict in the North East

THERE ARE AT LEAST 500 CHILD SOLDIERS FIGHTING IN NORTHEAST INDIA, AND THE WORLD HASN'T NOTICED

There are at least 30 militant outfits spread over the hills and valleys of Manipur. Many have training camps in Burma. And there are conflicts that have been dragging on for at least five decades in Northeast India. To contain them, New Delhi enforces the Armed Forces Special Powers Act — a special legislation first introduced in 1958 to contain Naga insurgents. It allows security forces to arrest, detain and kill, without fear of prosecution.

According to a petition submitted to India's Supreme Court in October 2012 by Manipur's Extrajudicial Execution Victim Families' Association and other NGOs, 1,528 civilians, including 98 children, were killed by security forces in Manipur between 1979 and 2012. Unsurprisingly, such brutality has alienated the locals, aggravated the conflicts and formed a ready pool of would-be insurgents.

Poverty also plays a role. The seven states of Northeast India rank lowest in terms of infrastructure development, and most of the child soldiers are recruited from very poor families. "I was promised a cell phone," says one of the boys recruited.

Source: Arijit Sen. There Are at Least 500 Child Soldiers Fighting in Northeast India, and the World Hasn't Noticed. TIME. March 24, 2014

Incidents of violence due to insurgencies in the north eastern states Manipur, Mizoram, Meghalaya, Nagaland, Assam, Arunachal Pradesh and Tripura have reduced in recent years.³⁵ However, decades of violence has impacted children, including in indiscriminate attacks or recruitment into combat by armed groups, killings and arrests by security forces, and due to school closures during strikes.

The North–East of India is a magnificent and tragic tapestry of people, events and nature. There is strength and fragility in its immense diversity — 350 communities in eight states with a population of about 35 million people. While major interstate conflicts are on the decline, there are many prolonged, intractable conflicts within the state and across borders involving a variety of non–state actors. As political and social deprivation give birth to ethnic militancy, economic under development leads to regional militancy.³⁶

Source: Impact of Conflict on Children in Assam and Manipur States of India. The Northeast Research & Social Work Networking, Kokrajhar. 2014.

In August 2018, the Central Bureau of Investigation (CBI) registered against eight soldiers including an army officer, Major Vijay Singh Balhara, accusing them in the extrajudicial killing of Azad Khan, a 12-year-old boy.³⁷ The Supreme Court has directed the Central Bureau of Investigation (CBI) to set up a five-member team to examine at least 87 killings by police, army, and paramilitary forces in response to a petition filed by victim's families and non-governmental groups in Manipur seeking investigation into 1,528 killings.³⁸ The Supreme Court had first appointed a judicial inquiry commission to look into the allegations.

The inquiry commission found that Azad had been killed in custody. According to eyewitnesses, Azad was sitting with his friend and neighbour in the verandah of his house, where his parents and relatives were also present, when about 30 security personnel turned up and dragged Azad to a field nearby. Azad's parents, relatives and friends were locked in a room by the security forces, but they could see through the window that Azad was beaten up by the soldiers. He was then shot by one of the commandos and a pistol was thrown near the body.

An ongoing effort in Assam to weed out illegal immigrants—one of the key demands of separatist insurgent groups—proved disruptive when nearly 4 million people were not able to establish citizenship claims. Many, including children, ended up in detention.³⁹ Over 1.9 million still remain excluded from Assam's final National Registration Certificate (NRC).⁴⁰

Conclusion

Those that promote armed resistance or military solutions-- the warmongers-- often forget to consider the impact of conflict not just on the economy, on civil liberties, but also on the most vulnerable in the population: children.

It is crucial that protection of rights of children is prioritised by Indian authorities while adopting policies around national security. The Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Geneva Convention, 1949, and the 1977 Protocols Additional to the Geneva Convention, the International Labour Office (ILO) Convention 182 on the Elimination of the Worst Forms of Child Labour, the Rome Statute of the International Criminal Court, as well as Security Council resolutions 1261(1999), 1314(2000), 1379(2001) and 1460(2003) have today come to provide a strong and significant body of norms and standards for the protection of children from the impact of armed conflict.⁴¹

India should also consider endorsing the Safe Schools Declaration, a political commitment for countries to take concrete steps to make students, teachers, and schools safer during times of armed conflict, including by agreeing to refrain from using schools and universities for military purposes.⁴²

It is time that all parties to a conflict take steps to protect children from paying the highest price in a war they did not choose.

Endnotes

- 1 Greater Kashmir. March 24, 2019. Hajin Minor's Killing: Mother's appeal to seek release of her son goes unheard. [https://www.greaterkashmir.com/\[X\(1\)S\(3xmzcc5524pwbkmo5gx4545\)\]/news/kashmir/hajin-minor-s-killing-mother-s-appeal-to-see-release-of-her-son-goes-unheard/317336.html](https://www.greaterkashmir.com/[X(1)S(3xmzcc5524pwbkmo5gx4545)]/news/kashmir/hajin-minor-s-killing-mother-s-appeal-to-see-release-of-her-son-goes-unheard/317336.html) Last accessed on 23 September 2019
- 2 Ministry of Home Affairs. Government of India. Annual Report. 2017-18 [http://www.mha.nic.in/sites/upload_files/mha/files/AR\(E\)1415.pdf](http://www.mha.nic.in/sites/upload_files/mha/files/AR(E)1415.pdf) Last accessed on Last Accessed on 25 October 2015.
- 3 UNICEF. March 22, 2011. Child Protection from Violence, Exploitation and Abuse https://www.unicef.org/protection/57929_57997.html. Last Accessed on 25 October 2015.
- 4 United Nations. Office of the Special Representative of the Secretary-General for Children and Armed Conflict, The Six Grave Violations. <https://childrenandarmedconflict.un.org/six-grave-violations/>. Last Accessed on 25 October 2019.
- 5 .9 Ibid.
- 6 Institute of Conflict Management. South Asia Terrorism Portal, Datasheet Jammu and Kashmir. June 17, 2019. <https://www.satp.org/datasheet-terrorist-at-tack/fatalities/india-jammukashmir> .Last Accessed on January 2018.
- 7 BBC News. February 16, 2019. Pulwama attack: India mourns Kashmir dead, <https://www.bbc.co.uk/news/world-asia-india-47266001>. Last accessed on 25 October 2019.
- 8 Amnesty International. 2019. Detention of Minors, Tyranny of a 'Lawless Law'. https://amnesty.org.in/wp-content/uploads/2019/06/PSA-Report_15-FINAL-LOW-Version-2.pdf Last accessed on 25 October 2019.
- 9 Wani Fayaz. February 4 2018. 18 killed by pellets in Kashmir in two years, Indian Express. <http://www.newindianexpress.com/nation/2018/feb/04/18-killed-by-pellets-in-kashmir-in-two-years-1767914.html> Last accessed on 25 October 2019.
- 10 The Hindu. December 28, 2016. Don't use pellet guns indiscriminately: SC, <https://www.thehindu.com/news/national/Don't-use-pellet-guns-indiscriminately-SC/article16951229.ece> Last accessed on 25 October 2019.
- 11 Peerzada Ashiq. 2019. Kashmir, hundreds of pellet gun victims face a hazy future, The Hindu, June 1, 2019. <https://www.thehindu.com/news/national/in-kashmir-hundreds-of-pellet-gun-victims-face-a-hazy-future/article27401702.ece> Last accessed on 25 October 2019.
- 12 Indian Express. October 22, 2018. Exams postponed in Kashmir. <http://www.newindianexpress.com/nation/2018/oct/22/exams-postponed-in-kashmir-1888503.html> . Last accessed on 25 October 2019.
- 13 Ganguly, Meenakshi. October 31, 2016. Arsonists Torch 25th School in India's Kashmir, Human Rights Watch. <https://www.hrw.org/news/2016/10/31/arsonists-torch-25th-school-indias-kashmir> Last accessed on 25 October 2019.
- 14 Press Trust of India. July 11, 2018. Army Launches 'School Chalo' Operation in South Kashmir. <https://economictimes.indiatimes.com/news/defence/army-launches-school-chalo-operation-in-south-kashmir/articleshow/55275160.cms> Last accessed on 25 October 2019.
- 15 BBC News. May 1, 2019. Kashmir attack: Tracing the path that led to Pulwama. https://www.bbc.co.uk/news/world-asia-india-47302467?intlink_from_url=https://www.bbc.co.uk/news/topics/cgmzk7g3xn0t/pulwama-attack&link_location=live-reporting-story Last accessed on 25 October 2019.
- 16 Hasan, Akash. June 15, 2017. Minor Militants. Kashmir Life. <https://kashmirlife.net/minor-militants-is-sue-11-vol-09-143233/> Last accessed on 25 October 2019.
- 17 Anand, Geeta and Hari Kumar. November 14, 2016. Kashmir Is Paralyzed by an 'Adored' Band of Militants, New York Times. <https://www.nytimes.com/2016/11/15/world/asia/kashmir-india-pakistan-militants.html> Last accessed on 25 October 2019.
- 18 Sharma, Neeta. February 15, 2019 Terrorist Lived 10 km From Site Where He Killed 40 Soldiers in Kashmir. NDTV. <https://www.ndtv.com/india-news/pulwama-terror-attack-jaiish-e-mohammad-terrorist-who-attacked-crpf-in-jammu-and-kashmir-ived-10-km-f-1993899> Last accessed on 25 October 2019.
- 19 Kumar, Manoj. June 10, 2019. India jails three for life after shocking child rape and murder, Reuters, 9, <https://uk.reuters.com/article/uk-india-rape/india-jails-three-for-life-after-shocking-child-rape-and-murder-idUKKCN1TBONQ>. Last accessed on 25 October 2019.
- 20 Indian Express. August 30, 2017. 35 districts in 7 states badly affected by Maoism: Rajnath Singh. <http://indianexpress.com/article/india/35-districts-in-7-states-badly-affected-by-maoism-rajnath-singh-4820017/>. Last Accessed on 25 October 2019.
- 21 HAQ: Centre for Child Rights. January 2018. Children Growing up in the Shadow of Conflict; Focus on Chhattisgarh and Jharkhand. Report prepared for UNICEF-India.
- 22 Sukanya Shantha. May 20, 2019. A Year After 'Encounter', 8 Gadchiroli Families Conduct Last Rites Sans Bodies. The Wire. <https://thewire.in/rights/gadchiroli-encounter-families-conduct-last-rites-body-confirmation>. Last accessed on 25 October 2019.
- 23 Srivastava, Amitabh. A Shocking Surge. India Today. April 28, 2017. <https://www.indiatoday.in/magazine/msn-it/story/20170508-child-soldiers-maoists-jharkhand-986259-2017-04-28>. Last accessed on 25 October 2019.
- 24 United Nations, Children and Armed Conflict, Report of the Secretary-General, A/72/865-S/2018/465. May 16, 2018. <https://undocs.org/en/s/2018/465>. Last accessed on 25 October 2019.
- 25 Bede Sheppard. March 18, 2019. Keeping India's Schools Safe from Conflict Before Elections. Human Rights Watch. <https://www.hrw.org/news/2019/03/18/keeping-indias-schools-safe-conflict-elections>. Last accessed on 25 October 2019.
- 26 ANI. June 29, 2019. School reopens after 13 years in Naxal affected Jagargunda in Chhattisgarh, https://www.business-standard.com/article/news-ani/school-reopens-after-13-years-in-naxal-affected-jagargunda-in-chhattisgarh-119062900745_1.html. Last accessed on 25 October 2019.

- 27 Human Rights Watch. July 14, 2008. Being Neutral is Our Biggest Crime. <https://www.hrw.org/report/2008/07/14/being-neutral-our-biggest-crime/government-vigilante-and-naxalite-abuses-indias>. Last accessed on 25 October 2019.
- 28 Deccan Chronicle. June 29, 2019. Rabindra Nath Chowdhury, 3 CRPF jawans killed in Maoist ambush at Keskutul. <https://www.deccanchronicle.com/nation/current-affairs/290619/3-crpf-jawans-killed-in-maoist-ambush-at-keskutul.html>
- 29 Sundar, Nandini. 2016. *The Burning Forest – India’s War in Bastar*, Juggernaut Books New Delhi. p15
- 30 https://en.wikipedia.org/wiki/Salwa_Judum (last accessed 20/1/2018), and also Nandini Sundar and others vs State of Chhattisgarh, Writ Petition (Civil) No. 250 of 2007 [Under Article 32 of the Constitution of India] Decided On: 05.07.2011 Supreme Court of India: (AIR2011SC 2839).
- 31 Sundar, Nandini. 2016. *The Burning Forest – India’s War in Bastar*, Juggernaut Books. New Delhi. p192 -208
- 32 *ibid*, p16-17
- 33 *ibid*, p 24.
- 34 In 2007 for instance it was reported that about 12000 child soldiers had been recruited in the Judum https://en.wikipedia.org/wiki/Salwa_Judum Accessed on 25 October 2019.
- 35 South Asia Terrorism Portal, Datasheet- Insurgency North East, June 17, 2019, <https://www.satp.org/datasheet-terrorist-attack/fatalities/india-insurgencynortheast>. Last accessed on 25 October 2019
- 36 The Northeast Research & Social Work Networking, Kokrajhar. 2014. *Impact of Conflict on Children in Assam and Manipur States of India*. https://www.redhandday.org/fileadmin/user_docs/Study_Impact_of_Conflict_on_Children_in_Assam_and_Manipur_States_of_India_NERSWN_tdh_final_E.pdf. Last accessed on 25 October 2019
- 37 Press Trust of India. August 2, 2018. Army officer Major Vijay Singh Balhara booked by CBI in Manipur extra-judicial killing case. <https://www.financialexpress.com/india-news/army-officer-major-vijay-singh-balhara-booked-by-cbi-in-manipur-extra-judicial-killing-case/1267456/>. Last accessed on 25 October 2019
- 38 The Hindu. May 6, 2018. Iboyaima Laithangbam, Kin of Manipur encounter victims still wait for justice. <https://www.thehindu.com/news/national/other-states/kin-of-manipur-encounter-victims-still-wait-for-justice/article23788979.ece>; Human Rights Watch, India: Top Court Orders Manipur Killings Inquiry, June 15, 2017, <https://www.hrw.org/news/2017/07/15/india-top-court-orders-manipur-killings-inquiry>. Last accessed on 25 October 2019
- 39 Scroll. June 21, 2019. Assam: Additional NRC exclusion list to be published on June 26, <https://scroll.in/latest/927854/assam-additional-nrc-exclusion-list-to-be-published-on-june-26> Last accessed on 25 October 2015.
- 40 Karmakar, Rahul. August 31, 2019. Over 19 lakh excluded from Assam’s final NRC. The Hindu. <https://www.thehindu.com/news/national/over-19-lakh-excluded-from-assams-final-nrc/article29307099.ece>. Last accessed on 25 October 2019
- 41 Olara A. Otunnu, Under Secretary-General Special Representative of the Secretary-General for children and armed conflict, 22 April 2003, <https://www.unicef.org/emergencies/files/HSNBook.pdf>. Last Accessed on 25 October 2015.
- 42 Safe Schools Declaration, 2015, https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/utvikling/safe_schools_declaration.pdf. Last Accessed on 25 October 2015.

15 RETHINKING CHILD LABOUR

PRABIR BASU

Photo: Wen-Yan King



Introduction

Employment of children is not a new phenomenon. It has been in existence globally since the time of industrial revolution. It is closely linked to the construction of childhood, which is never a constant. According to the French social historian, Phillipe Ariès, “In medieval society the idea of childhood did not exist: this is not to suggest that children were neglected, forsaken or despised”.¹ What Ariès was indicating is that childhood is a socially constructed concept. Childhood has different meanings, and children have different roles and undertake different activities in different historical periods according to variances in ones social context.²

It is in this context that we find that, “our ideas about what is appropriate for children to do has changed radically over time, often as a result of political and cultural battles between groups with different ideas about the best way to treat children. Most of us would be shocked by the level of adult responsibilities children were routinely expected to shoulder a century ago”.³

Over the years, there has been a realisation that child labour is a violation of childhood. Indeed, child labour should have been a metaphor by now. But the fact is, despite recognition of child labour as violation of rights and with the enactment of laws to prevent, in many societies, including in large parts of Indian society, child labour is acceptable and its existence even justified by the existence of poverty in what is often described as the fastest growing economy in the world.

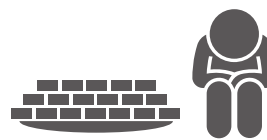
Poor households, without access to adequate means for bare subsistence, are less likely to be able to postpone their children’s involvement in child labour and invest in their education. They are more likely to resort towards child labour in order to address their needs. There is a strong case, both theoretical and empirical, to propose that economic vulnerability, associated with poverty, risk and shocks,



India accounts for the highest number of child-labour force in the world, ranking 116 among 172 countries across the globe.

plays a key role in driving children to work. But, it is also the case that inequality, lack of educational opportunities, slow demographic transition, traditions and cultural expectations become factors, if not more, for the persistence of child labour in India.

Implementation of laws have been singularly ineffective. They have rarely been even monitored, much less enforced. This is evident by the low rate of decrease in the number of child labour of less than 14 years of age in India which is only 25.7 per cent in the last 30 years (1981 – 2011) as per the Census figures of India. A study by Human Rights Watch conducted over 1995 and 1996 in several States of India found that all of these laws were routinely flouted, with absolutely no risk of any punishment to the offender.⁴



While child labour is the result of poverty and inequality, child labour itself also results in persistence of poverty and inequality.

SOME FACTS RELATED TO CHILD LABOUR IN INDIA

- One in every 10 workers in India is a child!
- A total of 10.1 million children in the age group of 5-14 years are involved in some kind of labour. [Census 2011]
- Out of these 10.1 million children, 4.4 million (42.6 per cent) were main workers in 2011 while 5.8 million were marginal workers that included 3.5 million students and 2.3 million others.
- The proportion of marginal workers who were students had increased from 2.5 million in 2001 to 3.5 million in 2011. In other words, while 36.2 per cent of the marginal workers were students in 2001, the same figure stood at 60.3 per cent in 2011.
- While 14.2 per cent of main child workers were in the 5–9 years age group in 2001, the numbers increased to 25.6 per cent in 2011.
- Child labour is prominent in rural India – 80 per cent of working children live in India's villages, where most of them work in agriculture.
- The Census Reports indicate that out of all social groups the incidence of child labour was highest among Scheduled Tribes in 2011.⁵
- The incidence of child labour among Scheduled Castes was also reported to be higher as compared to other groups in 2011.
- 8.51 per cent of child labour are in wholesale and retail trade (repair of motor vehicles and motor cycles), 25.45 per cent are in art, entertainment, recreation and other service activities, 5.97 share in manufacturing Industry, and 2.24 per cent child labour are in construction industries.
- Some of them also work in household industries and are employed in home-based businesses.
- Children between 14–17 years engaged in hazardous work account for 62.8 per cent of the India's child labour workforce, 10 per cent of whom are hired in family enterprises.
- Over half of working adolescents do not study. This number is higher for adolescents doing dangerous work.
- It is not surprising that more boys than girls (38.7 million vs. 8.8 million) are forced into doing hazardous work

Source: International Labour Organization's World Report on Child Labour 2015

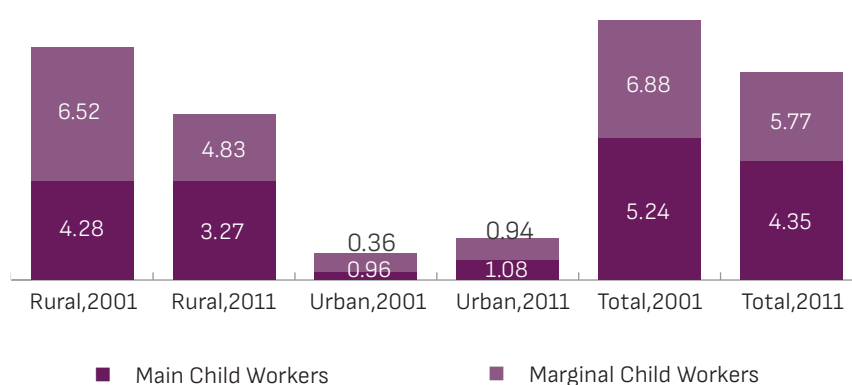
Estimation of Child Labour in India

Census of India is the only source of head count estimation of child labour but that is not the direct survey of child labour. The number of child labour has been drawn from the number of main and marginal workers as per age category. The government of India is indifferent to demands to conduct a nationwide survey of child labour which is an urgent need particularly after amendment of Child Labour (Prohibition and Regulation) Act, 1986 in the year 2016. Without estimating the number of child labour and mapping the engagement of children in different sectors how can government plan for the proper enforcement of the legal ban on employment of children is a pertinent question to ask.

The number of child labour has been drawn from the number of main and marginal workers as per age category. The government of India is indifferent to conduct a nationwide survey of child labour.

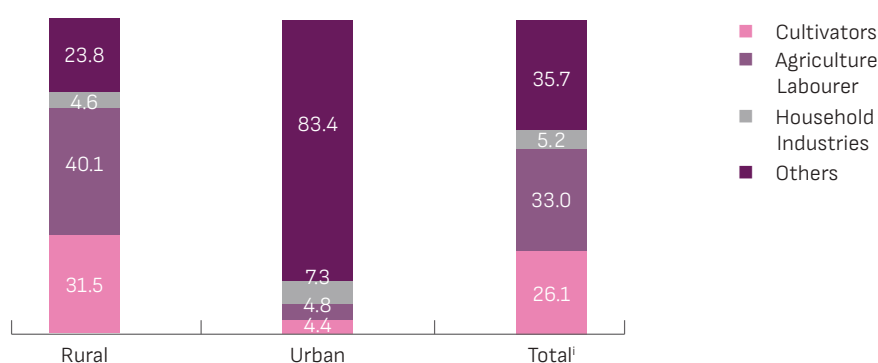
Census figures on Main and Marginal workers are the only trustworthy estimation of child labour in India. As per Census 2011 there are more than 10 million child labour in India in the 5-14 years age group. The first comprehensive act drafted towards elimination of child labour of less than 14 years old is Child Labour (Prohibition and Regulation) Act, 1986. The number of child labour has come down only by 20.4 per cent in last 10 years.

FIGURE 1 CHILD WORKERS BY DURATION OF WORK, 2001-2011 (IN MILLION)



Source: Census 2001 and 2011

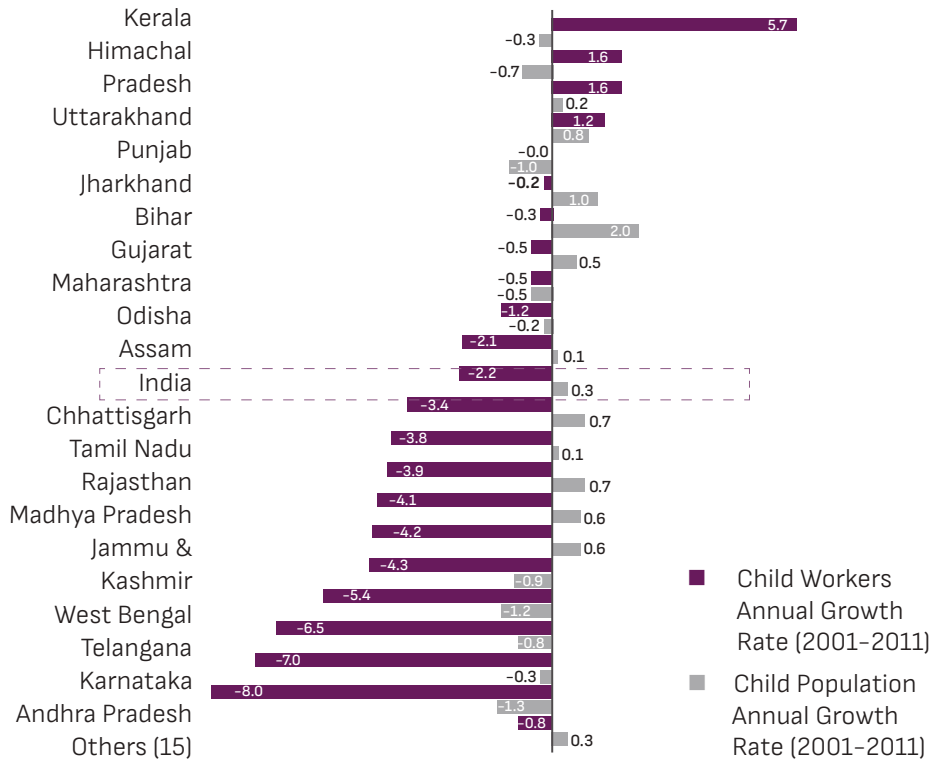
FIGURE 2 CHILD WORKERS (MAIN+MARGINAL) IN MAJOR SECTORS IN INDIA, 2011 (IN PER CENT)



Source: Census Micro Sample 2011

i The total percentage in the graph has been computed against the total population of children and is not a linear cumulative of rural and urban percentages. For example the total percentage of children employed in cultivation has been depicted against the total population of children in the country whereas the percentage for rural area has been worked out against the total 'rural' population of children.

FIGURE 3 CHILD POPULATION AND CHILD WORKERS, ANNUAL GROWTH RATES, 2001-2011

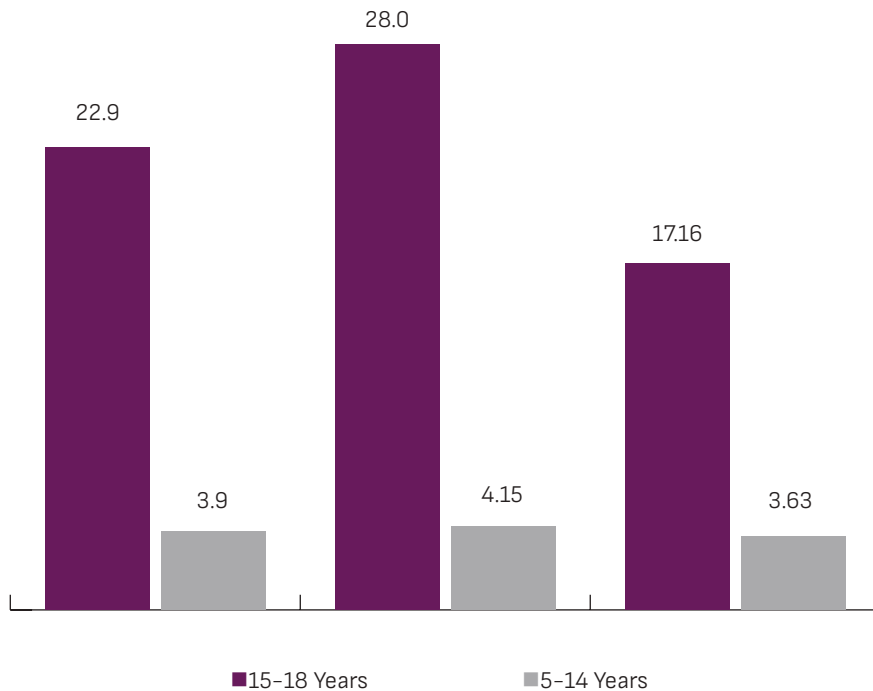


Source: Census 2001 and 2011

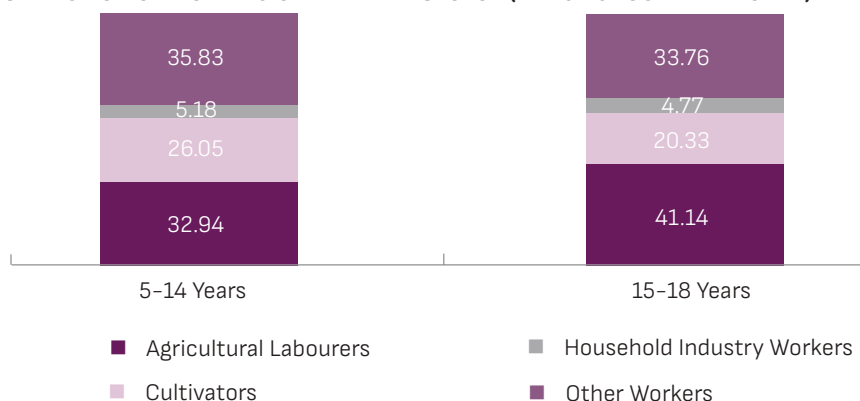
Among the state of India the following five state has the highest percentage of child labour among the 5-14 years age group – Nagaland (13.24 per cent), Himachal Pradesh (10.29 per cent), Sikkim (8.41 per cent), Rajasthan (5.17 per cent), Jharkhand & Arunachal Pradesh (both 4.86 per cent).

The five state which have the highest number of child labour in India are Uttar Pradesh (21,76,706), Bihar (10,88,509), Maharastra (727932) Madhya Pradesh (700239), and Andhra Pradesh (6,73,003).

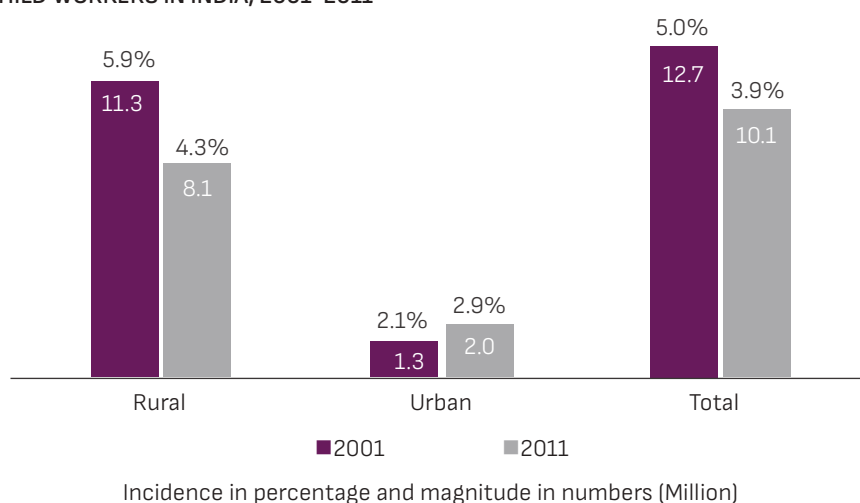
FIGURE 4 AGE AND GENDER-WISE DISTRIBUTION



Source: Census 2011

FIGURE 5 DISTRIBUTION OF WORKING CHILDREN BY SECTOR (BY AGE GROUP IN PER CENT)

Source: Census 2011

FIGURE 6 CHILD WORKERS IN INDIA, 2001-2011

Source: Census 2001 and 2011

The six major states where the number of child labour has increased considerably after 2001 are Goa (141.88 per cent), Kerala (73.71 per cent), Nagaland (39.05 per cent), Manipur (18.21 per cent), Himachal Pradesh (17.48 per cent) and Uttarakhand (17.45 per cent)

Defining or conceptualising child labour has been and continues to be one of the most complex issues as it involves three difficult-to-define concepts – ‘child’, ‘work’ and ‘labour’. Each of them is defined differently by different countries and internationally. As stated by Burra, “those who have argued for narrow definition have best been motivated in part by the desire to reduce the size of the problem and thus make it manageable. But this conceptual sleight of hand flies in the face of common sense and results in making the work of millions of children invisible to public policy and public action.”⁶ This indeed is the reality.

“The level of education has a positive relationship with the elimination of child labour. However, the incidence of child labour in different states in different educational profiles needs to be investigated further to understand the reasons why children continue to work despite the government developing schemes for the promotion of education. Although primary education appears to have done fairly well, efforts to support secondary and higher education need to be strengthened.”

Source: Ellina Samantroy, Helen R. Sekar, Sanjib Pradhan State of Child Workers in India- Mapping Trends.

If we consider, any child out of school as potential child labour then the larger estimates give a picture of an enormous place of work, with production growth based on the exploitation of children. But there are reasons to be sceptical about the much larger estimates, even though it is certainly the case that those children who have never attended school or have dropped out of school are far more likely to be drawn into the work force.

Indisputable Human Rights Issue

Child labour is a human rights problem and increasingly recognised as such the world over.

To start with the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) of states:

“Children and young persons should be protected from economic and social exploitation. Their employment in work, harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.”

“Children have only recently come on to the Human Rights agenda. Traditionally, they have not been treated as a separate group but were regarded merely as a residual category. They were thought of merely as an extension or property of their parents”

Source: Twenty Years of CRC – A Balance Sheet. HAQ: Centre for Child Rights and terre des Hommes, Germany.

Consider also the UNCRC, which in Article 32(1) states:

“States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful for the child’s health or physical, mental, spiritual, moral or social development.”

Further Article 32(2), of the UNCRC requires the states parties to take “legislative, administrative, social and educational measures” in respect of the foregoing, gives an added power to this human rights injunction.

But India has ratified the UNCRC with a reservation on article 32, which declares the minimum age of employment and directly relates to child labour. Government of India made the following declaration on Article 32:

“While fully subscribing to the objectives and purposes of the Convention, realizing that certain rights of the child, namely those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international cooperation, recognizing that the child has to be protected from exploitation of all forms including economic exploitation, noting that for several reasons children of different ages do work in India; having prescribed minimum age for employment in hazardous occupations and in certain other areas, having made regulatory provisions regarding hours and conditions of employment, and being aware that it is not practical immediately to prescribe minimum age for admission to each and every area of employment in India – the Government of India undertakes to take measures to progressively implement the provisions of Article 32, particularly paragraph 2 (a), in accordance with its national legislation and relevant international instruments to which it is a State Party.”

Also explicit is the 1999 International Labour Organisation Convention (No. 182) concerning the Elimination of the Worst Forms of Child labour. In its preamble, C182 recalls, the 1989 UNCRC, the 1998 ILO Declaration on Fundamental Principles and Rights at Work, and the 1956 United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institution and Practices Similar to Slavery. Thus it establishes its prohibition of worst forms of child labour on a human rights framework, at least in part. On 13 June 2017, the Government of India ratified the two fundamental ILO Conventions concerning the elimination of child labour, the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182).

With this ratification and with amending the Child Labour (Prohibition and Regulation) Act 1986 to ban employment of children of less than 14 years in all sectors and ban employment of children of 15-18 years age group in hazardous sectors in the year 2016, it is time for India to withdraw this declaration on the Article 32 of UNCRC, as its law is now consistent with international law.

However, because of the loopholes in international conventions themselves, including UNCRC and the ILO convention on minimum age and worst form of child labour, there remains scope to legally allow children to work in some sectors and at attaining of certain age that could be below 18 years. The government of India declared while ratifying the ILO convention on minimum age that the minimum age of employment in India will be 14 years and allowing children to work in so-called 'non-hazardous sectors' which might not be considered as 'Worst form of Child Labour' as per ILO convention.⁷

Nevertheless, the problem of child labour is and must be recognised as a human rights problem not in narrow monolithic sense, but as one that is multidisciplinary, multifaceted and multi-sectoral. In other words it is a multidimensional problem involving practices that violate children's human rights both directly (e.g. slavery) and more commonly indirectly (e.g. compulsory labour that results in denial of the right to education).

During the course of this century, a universal concern for childhood has grown alongside the ideas of human rights. Human rights are today understood not only in the form of the individual civil and political rights within a nation-state, but also in terms of social, economic and cultural rights.

Thus, when child labour is designated as a condition from which children have a right to be free and not merely an option for which regulating standards must be devised, it becomes an opportunity for empowerment and mobilisation that otherwise is lacking. A rights-based approach to child labour elevates the needs and interests of children in this context to societal needs and interests with associated claims of legal and political legitimacy.

This finds resonance in a statement laid on the Table of the House, the Minister of State (IC) For Labour and Employment, Shri Santosh Kumar Gangwar, presented the following:⁸

Child Labour is an outcome of various socio-economic problems such as poverty, economic backwardness and illiteracy. Government is following a multi-pronged strategy for elimination of child labour. It comprises of statutory and legislative measures, rehabilitation and universal elementary education along with convergence with other schemes for socio economic development.

Laws and Policies on Child Labour

The ILO in 1937 adopted a convention fixing the minimum age where children were to be employed in certain occupations. The employment of Children Act 1938 was passed to implement this convention. It prohibited the employment of children under 15 in hazardous occupations like railways and ports. It also dealt with employment in industrial establishments not covered by the Factories Act. Though, the 1938 Act banned child labour in hazardous industries, it made an exception in favour of family labour.

The Indian Constitution accords rights to children as citizens of the country. The Constitution, promulgated in 1950, encompasses most rights included in the UN Convention on the Rights of the Child as Fundamental Rights and Directive Principles of State Policy. Over the years, many individuals and public interest groups have approached the apex court for restitution of fundamental rights, including child rights. The Directive Principles of State Policy articulate social and economic rights that have been declared to be "fundamental in the governance of the country and the duty of the state to apply in making laws" (Article 37). The government has the flexibility to undertake appropriate legislative and administrative measures to ensure children's rights.⁹ However, no court can make the government ensure them, as these are essentially directives. These directives have enabled the judiciary to give some landmark judgements promoting children's rights, leading to Constitutional Amendments as is in the case of the 86th Amendment to the Constitution that made Right to Education a fundamental right.

Primary among the Constitutional Guarantees that are meant specifically for children who are in labour includes right to free and compulsory elementary education for all children in the 6-14 year age group (Article 21 A), right to be protected from any hazardous employment including employment in factories and mines till the age of 14 years (Article 24), right to be protected from being abused and forced by economic necessity to enter occupations unsuited to their age or strength (Article 39(e)), right to equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and guaranteed protection of childhood and youth against exploitation and against moral and material abandonment (Article 39 (f)), right to early childhood care and education to all children until they complete the age of six years (Article 45).

Besides, all children, including those in labour, also have rights as equal citizens of India, just as any other citizen, e.g. right to equality (Article 14), right against discrimination (Article 15), right to personal liberty and due process of law (Article 21), right to being protected from being trafficked and forced into bonded labour (Article 23), right of minorities for protection of their interests (Article 29), right of weaker sections of the people to be protected from social injustice and all forms of exploitation (Article 46) and right to nutrition and standard of living and improved public health (Article 47).

CHILD LABOUR IN NATIONAL POLICY FOR CHILDREN, 2013

- Ensure that all out of school children such as child labourers, migrant children, trafficked children, children of migrant labour, street children, child victims of alcohol and substance abuse, children in areas of civil unrest, orphans, children with disability (mental and physical), children with chronic ailments, married children, children of manual scavengers, children of sex workers, children of prisoners, etc. are tracked, rescued, rehabilitated and have access to their right to education.
- Facilitate concerted efforts by local governments, non-governmental organisations/ community based organisations to map gaps in availability of educational services, especially in backward, child labour intensive areas, areas of civil unrest, and in situations of emergency, and efforts for addressing them.

Source: National Policy for Children, 2013. Ministry of Women and Child Development.

“Child Labour (Prohibition and Regulation) Act, 1986” did prohibit employment of children less than 14 years old in 13 occupations and 59 processes. Besides these prohibited sectors, children of less than fourteen years old could be employed, but under certain regulated conditions on working hours, holidays, rest hours and other educational and health measures and benefits. If any violations occurred by employing children, penalisation to the extent of Rs.20000, for illegal employment of each child was imposed.

There are separate laws governing child labour in factories, in commercial establishments, on plantations, and in apprenticeships. There are laws governing the use of migrant labour and contract labour, which would also apply to children. For children in servitude, the Bonded Labour System (Abolition) Act, 1976, strictly outlaws all forms of debt bondage and forced labour and is an extension of The Children (Pledging of Labour) Act enacted in 1933 by the British colonial government relating specifically to child bondage.



Laws Related to Child Labour

- **The Children (pledging of Labour) Act 1933**
- **The Factories Act, 1948**
- **The Plantation Labour Act 1951**
- **The Mines Act 1952**
- **The Beedi and Cigar Workers (Conditions of Employment) Act, 1966**
- **The Bonded Labour System (Abolition) Act 1976**
- **The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 amended in 2016**
- **The Juvenile Justice (Care and Protection for Children) Act, 2015**

Factories Act, 1881 prohibited the employment of children less than seven years of age and also in two separate factories on the same day. It limited the working hours of children to nine hours a day and stipulated at least four holidays to be given in a month. However, this act concerned only factories employing hundred persons or more. This act was amended several times before the independence of India and every time it increased the minimum age of employment in the factory. Growing recognition of the harm caused to children, the Factories Act 1948 prohibited the employment of children by setting the limit of the completion of fourteen year as the minimum age for working in any factory.

The Indian Mines Act 1923 increased the minimum age for employment from 12 to 13 years in mines. The Indian ports (Amendment) Act 1931 prescribed the age for employment of children in handling the goods as 12 years.

In 2016, Government of India amended the Child Labour (Prohibition and Regulation) Act and passed the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, which while defining child as a person who has not completed fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009, includes a category of 'adolescent' defined as a person who has completed his fourteenth year of age but has not completed his eighteenth year.¹⁰ Although providing for two distinct categories of children, in effect the law, for the first time, addresses children up to the age of 18 years. While the law prohibits the engagement of children (less than 14 years old) in all occupations, it prohibits the engagement of adolescents (15 to 18 years old) only in hazardous occupations and processes.¹¹

When this law was being enacted, it came under a lot of criticism for specifically including the following as a proviso:¹²

- (2) Nothing in sub-section (1) shall apply where the child —
 - (a) helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations;
 - (b) works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed: Provided that no such work under this clause shall effect the school education of the child.

After strengthening the legislative framework through amendment in Child Labour Act, Government has framed the Child Labour (Prohibition & Regulation) Amendment Rules, 2017 which inter alia specifies the duties and responsibilities of State Governments and District Authorities to ensure effective enforcement of the provisions of the Act. Government has also devised a Standard Operating Procedure (SOP) as a ready reckoner for trainers, practitioners and enforcing and monitoring agencies. Government is also implementing the National Child Labour Project (NCLP) Scheme for rehabilitation of child labour. Under the Scheme children in the age group of 9-14 years, rescued/withdrawn from work are enrolled in the NCLP Special Training Centres, where they are provided with bridge education, vocational training, mid- day meal, stipend, health care, etc. before being mainstreamed into formal education system. Further to ensure effective enforcement of the provisions of the Child and Adolescent Labour (Prohibition & Regulation) Act, 1986 and smooth implementation of the NCLP Scheme a separate online portal Platform for Effective Enforcement for No Child Labour (PENCIL) has been developed and is in operation.

Extracted from a - Statement Is Referred To In Reply To Parts (A) To (D) Of Lok Sabha Starred Question No. 116 For 11.02.2019 Regarding Child Labour By Prof. Richard Hay

This provision was included in the laws despite the Parliamentary Standing Committee examining the bill saying: "The ministry is itself providing loopholes by inserting this proviso since it would be very difficult to make out whether children are merely helping their parents or are working to supplement the family income. Further, allowing children to work after school is detrimental to their health as rest

and recreation is important for their physical and cognitive development.” The Committee also stated that rest and recreation is of utmost importance for the mental and physical development of a child and that working will only adversely affect their studies and their health.¹³

Children above 14 years of age are prohibited to be employed in hazardous sectors. When the law was enacted, the old schedule having the list of 13 occupations and 59 processes had been replaced with a new one by the amendment which reduced the number of occupations in the hazardous sector thereby allowing the adolescent to work in many kinds of unsafe and exploitative sectors. Subsequently, after a lot demands and criticisms on this, the government relented and by Gazette Notification by Ministry of Labour and Employment¹⁴ the Schedule of amended Act has been again replaced by a new schedule which is almost similar in content as the older one. However there are certain concerns. Part A of the Gazette specifies- “Hazardous occupation and processes in which adolescents are prohibited to work and children are prohibited to help.” And it list out 9 occupations and 28 industries involving hazardous processes (in 3). Part B lists occupations and processes where children are prohibited to help in family or family enterprises (in addition to Part A). This includes 16 non-industrial occupations and 59 industrial occupations. Does this mean adolescents are allowed in these?

Since the Act has banned employment of children of 15-18 years old in Hazardous Sectors, it is perhaps relevant to take a stock of the number of children of that age group engaged in these. Census 2011 provides us data on the Main and Marginal workers of the age group of 15-19 Years. As per the data there are 30 million main and marginal workers of age group 15-19 in India, which is 25 per cent of the population of that age group.¹⁵

There are 30 million main and marginal workers in the 15-19 years age group in India which is 25% of the population of that age group

CHILD LABOUR IN NATIONAL PLAN OF ACTION FOR CHILDREN, 2016

Sub-objective 2.3: Promote affordable and accessible quality education up to the secondary level for all children.

- Appropriate bridge courses and counselling facilities for all Out Of School (OOS) children, children rescued from child labour/trafficking and their subsequent enrolment in age appropriate classes.

Sub Objective 3.1: Create a caring, protective and safe environment for all children to reduce their vulnerability in all situations and to keep them safe at all places.

Support development of community-based management and prevention system to address child labour, child migration, trafficking, child marriage, and all forms of abuse, exploitation and violence against children.

- » District-wise vulnerability mapping of children to be undertaken by child protection agencies in coordination with District administration and relevant agencies such as PRIs and ULBs
- » Orient SHGs and PRIs to create awareness on domestic violence and violence against women
- » Design and implement mass campaign against trafficking, child labour, child migration, and child abuse in partnership with Police, District administration, State/UTs Government, parents, teachers, doctors, civil society organisations, PRIs community and other stakeholders

Sub-objective 3.2: Legislative, administrative, and institutional redressal mechanisms for Child Protection strengthened at National, State and district level.

- Strengthen Institutional mechanisms for rescue and rehabilitation of children who are victims of Child Sexual Abuse/ trafficked children/child labour and other vulnerable children with special focus on protection of girl child.
- » Ensure stringent implementation of PCPNDT Act 1994, PCMA 2006, RTE Act 2009, POCSO Act 2012, JJ Act 2015, Child Labour (Prohibition and Regulation) Amendment Act, 2016 and other related laws

There is of course a lot of debate about these figures. Because so much of child labour is in informal activities, and is anyway a shadowy phenomenon as very few parents or employers want to admit to it, there is no way of being sure of their accuracy.

Information on rescued child labour is not easily available in public space. One of the sources remains information provided in response to parliament questions. For the number of prosecutions and convictions in cases of child labour see Annexure 1. This shows that there have been only 823 violations under the child labour law in 2018 of which there were 545 prosecutions and 581 convictions. Of course, the numbers don't quite add up!

As per the information received from District Project Societies the number of child labourers rescued/withdrawn from work, rehabilitated and mainstreamed under National Child Labour Project Scheme during the last four years, State-wise is:

TABLE 1: NO. OF CHILDREN RESCUED/WITHDRAWN FROM WORK, REHABILITATED AND MAINSTREAMED UNDER NATIONAL CHILD LABOUR PROJECT (NCLP) SCHEME DURING THE LAST FOUR YEARS, STATE-WISE

Sl. No.	State	2014-15	2015-16	2016-17	2017-18
1	Andhra Pradesh	346	716	814	203
2	Assam	60	9693	434	915
3	Bihar	14028	2656	0	2800
4	Chhattisgarh	10173	0	0	0
5	Gujarat	892	0	0	187
6	Haryana	2583	0	40	0
7	Jammu & Kashmir	0	10	0	0
8	Jharkhand	2989	3450	334	2014
9	Karnataka	2519	1984	681	679
10	Madhya Pradesh	7879	7472	4442	11400
11	Maharashtra	3804	2177	1692	5250
12	Odisha	21315	1900	0	0
13	Punjab	290	880	592	994
14	Rajasthan	3349	8476	630	105
15	Tamil Nadu	4492	4089	2850	2855
16	Telangana	2691	1810	1431	2137
17	Uttar Pradesh	16277	0	3066	0
18	West Bengal	22689	13763	13973	17899
19	Uttarakhand	145	0	0	0
20	Nagaland	436	0	0	197
	Total	116957	59076	30979	47635

Source: Annexure Referred to In Reply To Part (D) Of Lok Sabha Starred Question No.116 For 11.02.2019 By Prof. Richard Hay, Hon'ble Mp Regarding 'Child Labour'

Promises and Reality

This amendment to the Child and Adolescent Labour (Prohibition and Regulation) Act 1986¹⁶ might give a first impression that the Government is taking a stringent measure to end child labour up to 14 years. But a closer look at this reveals that it is hardly the case.

There are some relevant measures in the act such as a jail term of up to 2 years for those employing children below the age of 14 for labour activities. This Amendment, however, allows children to work in family enterprises under such strict regulation that it seems almost impossible that children can be engaged in any work within family enterprises except agriculture or any other family business solely occupied by the member of the family (parents, siblings, maternal or paternal uncle or aunt)

at time of school holidays and vacations.¹⁷ But the question is how will the law enforcing agencies or officer ensure that child is not engaged within the family in contravention with the provisions of the amended act and rule on child labour. Such kind of monitoring regularly at family level in India considering the remoteness, geographical variation and large number of population, seems almost impossible. Even if the inspections happened at the family level, this Act will create enough scope for corruption at ground level and there is every possibility that the children continue to work under cover of the provisions of this act within the family along with keeping their name in school register and attending school occasionally.

More importantly, 20.57 per cent of the child labourers are from Scheduled Caste background and 19.83 per cent of them are tribals.¹⁸ Many of these children work with families who are in debt bondage, enslaved by contractors and unscrupulous landlords. Including such a provision, if not regularly and properly inspected and monitored at the family level by the law enforcing authorities, would serve to restrict children in traditional caste-based occupations and would consequently perpetuate social injustice. The biggest challenge is that in a caste ridden society like India, children from a particular caste will be forced to work alongside their parents in domestic work, agricultural work, scavenging, pottery, blacksmith, carpentry, goldsmith, tailoring, embroidery, weaving, beedi making, tannery and in occupations like cobbler, barber, etc.

More importantly, 20.57 per cent of the child labourers are Dalits and 19.83 per cent of them are Tribals.

This clearly violates the right to life, good health, and play, leisure of the children particularly of the marginal and poor sections of the Indian society. Education is not just merely attending school. Hence working in such hazardous and exploitative employment even at the time of school vacations, holidays and most possibly when the children are not going to school, jeopardises the children's right to education.

PENCIL RECEIVES JUST 34 COMPLAINTS; NOT A SINGLE CHILD RESCUED

As Operation Muskaan continues to rescue children forced into labour from across the State, the national portal for reporting child labour — PENCIL — gathers dust.

HYDERABAD: As Operation Muskaan continues to rescue children forced into labour from across the State, the national portal for reporting child labour — PENCIL — gathers dust.

The online portal, PENCIL which stands for Platform for Effective Enforcement for No Child Labour, in the two years of its operation, has received only 34 complaints from different parts of the State. Of these 34, not a single child has been rescued till date.

It is learnt that these complaints most often end up being addressed very late by the officials and most of the time, the child would have left the location owing to migration, or would have crossed the age-bar before being rescued. In this fashion, about 17 cases have been closed with no specific understanding of why they were not addressed. Of these, in 16 cases a First Action Report (FIR) was filed.

Officials from labour department also say note that part of the problem is also the fact that the portal lacks teeth and doesn't allow in-depth follow up of cases. "There are several issues with the portal when it comes for use by the officials. There is no way that a state level official can monitor the status of the case or find out why it was closed, as the scope of the portal is limited to only reporting whether a child was employed or not without any place for comments," noted a labour department official.

"The attitude of the labour department is poor in terms of both understanding the issue and giving a response. They need to understand that like any other social crime, child labour or bonded labour has to be addressed within 24 hours or the whole scenario changes. However, there is immense delay from their end in recognizing this as a crime, and in acting with swiftness," noted Dr Krishnan, Executive Director, National Adivasi Solidarity Council.

Source: <http://www.newindianexpress.com/cities/hyderabad/2019/jul/22/pencil-receives-just-34-complaints-not-a-single-child-rescued-2007539.html>

This amendment allows for any child to work as an 'Artist' in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities under certain regulations and safety measures. Complete ban on engagement of child as 'Artist' in entertainment industry is not advisable but that engagement must not be at the cost of their education, health and other development. It must not be their profession and regular work.

The amended rules allows child to work continuously for 27 days (daily 5 hours) as 'Artist' and stay away from regular school and studies. It allows a child to work in exchange for remuneration though 20 per cent of that remuneration must mandatorily be kept for child future as fixed deposit in a bank. After 27 days of work with one day break the child might be engaged for another 27 days at a stretch and this routine may continue for at least six- months under government permission. There are high chances of this kind of extensive engagement of child in today's entertainment industry in the era of mega serial and reality show which is exploitative and detrimental to their all round development.¹⁹

Besides participating in an adult-oriented industry, children are often exposed to unsuitable, anxiety inducing, and at times, dangerous operational hazards and situations. Many of these problems may be inherent and generic to the industry, but children, unlike their adult counterparts, should not be expected to handle the emotional and physical stress. The issue of regular monitoring of the condition of engagement of child artist by the authorities is another area of concern simply in terms of frequency and regularity. That is because there is always a shortage of human power in terms of number.

Ensuring that engagement of children both in family enterprises and entertainment industries happens under the regulations mandated by the Act and the rule is dependent on regular inspection of the places at which the employment.

Amendment Rule 2017 (Sec 17E) mandates a system of monitoring and inspection which is solely depending on the Inspector appointed as per section 17 of Child and Adolescent Labour (Prohibition and regulation) Act, 1986 and section 17 D of the Child Labour (Prohibition and Regulation) Amendment Rules 2017. But the 1986 Act, neither mandated the appointment of inspector nor specified the geographical jurisdiction of any inspector appointed for this purpose.²⁰ The same malaise exists in the 2016 amendment of the Act and 2017 amendment of the Rules.

Indeed, the employment of children in 'Family Enterprises' and in entertainment industries as child artist, without any robust mechanism for regular monitoring might lead to their employment in both the sectors in the most exploitative and hazardous forms. In doing so it violates the constitutional guarantees of equality before law, right to life and right to free and compulsory education for children of 6-14 years age group in this country. This violates the constitutional rights and mandates of the National policy for the children, 2013 as well. It is also violating the UNCRC by truncating the right to play, leisure and education for those children who will be employed in family enterprises and entertainment industries before and after school hours.

Employment of children in 'Family Enterprises' and in entertainment industries as child artist, without any robust mechanism for regular monitoring might lead to their employment in both the sectors in the most exploitative and hazardous forms.

Watch a film *Stained Glass* by Meera Dewan. She had made a poignant, and for many of us, a life changing film- *Whose Children* in 1986, just as the discussion on the child labour bill was on. She has followed the children that were there in her film in 1986 into their adulthood in *Stained Glass*. As we discuss the new amendment, it is good to see what those children of 1986 and now adults of today have to say, as also the child labourers of today.

CACL- Campaign Against Child Labour: Crusader to Eradicate Child Labour

Since last two and a half decades CACL (Campaign against Child Labour), a national campaign fraternity of more than few thousand civil society groups across the states have sincerely put in an effort to end child labour in all forms and has over the years, emerged as a significant social movement across the country. It had to take into account all those issues as social approval, gender disparity, poverty as the root cause, discrimination across class, caste ethnic groups and communities and finally education, which is a law now but remains obscure as it falls short of meeting its promises of including all social groups. Little wonder, child labour persists strongly as an escape route for the deprived childhood.

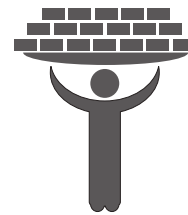
Miles to Walk to Make Us Hear Children!

It's true perhaps a lot of changes have occurred at both national and international levels in areas of judicial transformations, constitutional amendments, legal framework, appreciating media, pro-active legislatives and parliamentarians, and above all strong civil society spoke persons. All these together have impacted in bringing about recognition of the issue of child labour as an overarching necessity of this period. Although the recognition now is available, total eradication of child labour is still a distant dream as people from different backgrounds hold various opinions, including the logic of poverty, as the most popular one justification for continuance of child labour.

It is a matter of concern that even in 2018, the PIB release of 16 May 2015, announcing the new amended Act says –

“However, while considering a total prohibition on the employment of child, it would be prudent to also keep in mind the country's social fabric and socio-economic conditions. In a large number of families, children help their parents in their occupations like agriculture, artisanship etc. and while helping the parents, children also learn the basics of occupations. Therefore, striking a balance between the need for education for a child and the reality of the socio-economic condition and social fabric in the country, the Cabinet has approved that a child can help his family or family enterprise, which is other than any hazardous occupation or process, after his school hours or during vacation”.

It is high time we take a pause and look back to find that poverty is no more just an economic phenomenon alone. Nor is it just a consequence of illiteracy, low skill or ill health. It is reproduced phenomenally wherein child labour is both a cause and an effect. Poverty is now as much a result of State policies and programmes wherein state is in the process of abdicating its responsibilities from its primary duties especially in the wake of privatisation of the most basic services. In fact, it has been plausibly argued that child labour can actually lead to more poverty, by depressing wages in general and by forcing all family members to work at below subsistence wages to meet household survival needs. It can be shown that if the banning of child labour is effective and forces wages to go up in that area or activity, both parents and children will be better off even in income terms, not to mention overall well-being.



In West Bengal, till date the Inspector Minimum Wages has the additional responsibility of inspection related to child labour. Therefore, the regular inspection at the projects of entertainment industries and also at the level of family is of a grave concern.

Why is governance failing us so badly? We are all concerned that the principles and the values enshrined in the 'Constitution' are under siege and urgently need to be revived. It is urgent to establish more equitable per capita rights for all the children.

There is evidence and there is hope. But most of all, there is urgency – to sustain the momentum, work on multiple fronts and provide constant scrutiny of promises and processes to address the issue. There is need to ensure that such children do not fall through the cracks, jeopardising our development goals and the constitutional vision of a just and equitable society.

2019 is a watershed year for the education of India's children. The newly elected Union Government must express their commitment to quality education, total eradication of child labour and all children should enjoy rights starting with early childhood education, right up to secondary education.

Universal Children's Day takes place on November 20 annually. November 20 is also the anniversary of the day when the United Nations General Assembly adopted the Declaration of the Rights of the Child in 1959. The Convention on the Rights of the Child was then signed on the same day in 1989, which has since been ratified by 191 states.

Could our nation make a difference in the life of the children by leaving the issue in history and not in reality! and could the next 20th November, which will mark 30 years of UNCRC and 60 years of its adoption, be a day to mark the beginning of the end of child labour as an issue!

Annexure

NUMBER OF VIOLATIONS DETECTED, PROSECUTIONS LAUNCHED AND CONVICTIONS MADE UNDER THE CHILD LABOUR ACT.

State/UT	No. of Violation			
	2015	2016	2017	2018
Andaman & Nicobar Islands (U.T.)	0	0	0	0
Andhra Pradesh	9	2	-	-
Arunachal Pradesh	-	-	-	-
Assam	71	46	-	-
Bihar	NA	162	-	-
Chandigarh (U.T.)	22	17	13	1
Chhattisgarh	19	10	16	-
Dadra & Nagar Haveli (U.T.)	-	-	-	-
Daman & Diu (U.T.)	0	0	0	0
Delhi (U.T.)	100	53	45	17
Goa	-	-	-	-
Gujarat	142	79	68	133
Haryana	72	24	18	16
Himachal Pradesh	2	4	1	-
Jammu & Kashmir	17	10	8	4
Jharkhand	25	266	122	-
Karnataka	63	77	162	143
Kerala	3	4	3	4
Lakshadweep (U.T.)	0	0	0	0
Madhya Pradesh	182	64	48	-
Maharashtra	42	310	-	-
Manipur	0	0	0	-
Meghalaya	8	5	2	-
Mizoram	0	-	-	-
Nagaland	0	21	-	-
Odisha	2430	1762	325	-
Puducherry (U.T.)	0	0	0	1
Punjab	333	307	188	70
Rajasthan	55	78	7	8
Sikkim	0	0	0	-
Tamil Nadu	66	29	43	24
Tripura	2	6	2	14
Uttar Pradesh	206	409	540	261
Uttarakhand	74	7	5	11
West Bengal	61	-	-	-
Telangana	315	241	75	116
Total	4319	3993	1691	823

Source: Annexure Referred to In Reply To Parts (B) & (C) Of Lok Sabha Starred Question No.116 For 11.02.2019
By Prof. Richard Hay, Hon'ble MP Regarding 'Child Labour'

No. of Prosecution				No. of convictions			
2015	2016	2017	2018	2015	2016	2017	2018
0	0	0	0	0	0	0	0
1	2	-	-	2	13	-	-
-	-	-	-	-	-	-	-
44	15	-	-	0	0	-	-
722	107	-	-	NA	7	-	-
8	9	8	-	8	11	9	-
62	8	57	-	-	7	4	-
-	-	-	-	-	-	-	-
0	0	0	0	0	0	0	0
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
100	76	41	70	0	0	5	0
44	14	7	3	28	24	2	1
7	7	1	-	6	4	4	-
14	12	5	3	20	10	5	0
16	234	86	-	0	0	6	-
65	70	151	84	18	15	53	19
2	3	2	3	1	2	0	1
0	0	0	0	0	0	0	0
182	64	48	-	71	26	9	-
26	62	-	-	0	0	-	-
0	0	0	-	0	0	0	-
8	5	2	-	13	2	1	-
0	-	-	-	0	-	-	-
0	0	-	-	0	0	-	-
250	131	64	-	17	1	-	-
0	0	0	1	0	0	0	1
333	307	188	70	265	247	184	167
12	12	-	-	9	9	17	1
0	0	0	-	0	0	0	-
26	6	2	-	17	20	8	5
2	4	2	9	1	1	0	1
206	409	540	261	237	273	361	381
17	7	-	-	4	-	-	-
22	-	-	-	0	-	-	-
312	166	72	41	31	5	27	4
2481	1730	1276	545	748	677	695	581

Endnotes

- 1 Ariès, P. 1979. Centuries of childhood: A social history of family life. London: Penguin. Page 128
- 2 Morrow, V 2011, 'Understanding children and childhood', Centre for Children and Young People: Background Briefing Series, no. 1.
- 3 Sharp.G Child Labor and the Social Construction of Childhood <https://thesocietypages.org/socimages/2012/12/28/child-labor-and-the-social-construction-of-childhood/>
- 4 Human Rights Watch. 1996. The Small Hands of Slavery: Bonded Child Labour in India
- 5 Child Hope. Vol. 7, No. 2, April – June 2018. https://vvnli.gov.in/sites/default/files/Child_Hope_-_April-June_2018.pdf Last accessed on 6 October 2019
- 6 Burra, Neera et. al. 2006. Born Unfree: Child Labour, Education and the State in India. Oxford University Press. page XXV.
- 7 ILO Minimum Age Convention, 1973 (No. 138), Article 4 – Notwithstanding the provisions of paragraph 3 of this Article, a Member whose economy and educational facilities are insufficiently developed may, after consultation with the organizations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years.
- 8 A Statement is referred to in Reply to PRTS (a) To (d) of Lok Sabha Stared Question NO. 116 for 11.02.2019 Regarding Child Labour By Prof. Richard Hay
- 9 Constitution of India, Article 15.3 – Nothing in this article shall prevent the State from making any special provision for women and children.
- 10 "3. (1) No child shall be employed or permitted to work in any occupation or process
- 11 "3A. No adolescent shall be employed or permitted to work in any of the hazardous occupations or processes set forth in the Schedule: Provided that the Central Government may, by notification, specify the nature of the non-hazardous work to which an adolescent may be permitted to work under this Act."
- 12 Explanation.—For the purposes of this section, the expression, (a) "family" in relation to a child, means his mother, father, brother, sister and father's sister and brother and mother's sister and brother; (b) "family enterprise" means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons; (c) "artist" means a child who performs or practices any work as a hobby or profession directly involving him as an actor, singer, sports person or in such other activity as may be prescribed relating to the entertainment or sports activities falling under clause (b) of sub-section (2)".
- 13 Standing Committee On Labour (2013–2014) Fifteenth Lok Sabha Ministry Of Labour And Employment The Child Labour (Prohibition And Regulation) Amendment Bill, 2012 Fortieth Report http://164.100.47.134/Lsscommittee/Labour/15_Labour_40.Pdf Accessed on 16.06.15
- 14 <https://labour.gov.in/sites/default/files/THE%20SCHEDULE.pdf> and https://labour.gov.in/sites/default/files/Amendment%20in%20the%20Schedule%20to%20the%20Child%20and%20Adolescent%20Labour%20%28Prohibition%20%26%20Regulation%29%20Act%2C%201986%20_0.pdf
- 15 Census 2011 Table B-1 Main workers, Marginal workers, Non-workers and those marginal workers, non-workers seeking/available for work classified by age and sex
- 16 Child and Adolescent Labour (Prohibition and Regulation) Amendment Act 2016
- 17 Ibid. 2B
- 18 Ibid. Table – B1SC and B1ST
- 19 Ibid. Section 2C
- 20 The Child and Adolescent Labour (Prohibition and regulation) Act 1986, Section 17 says – The appropriate government may appoint inspector for the purposes of securing compliance with the provisions of this act



Photo: Gabriele Ferreri

16

DO CHILDREN'S ISSUES MAKE NEWS?

BIRAJ SWAIN

Photo: ywammadison





Introduction

Children and their issues make news. In fact, over the last few years we have seen how it has created public opinion leading to change in the law. We have seen it with the kind of mass hysteria that was generated following the rape and murder of the girl who was named Nirbhaya leading to shrill and emotional demands for change in the Juvenile Justice Act, because the media created the narrative of the law being 'easy' on offenders and allowing them to 'walk free'. This led to the amendment in the Juvenile Justice law. Once again the mass hysteria over rapes of young children and demands for more punitive laws, has led to the inclusion of death penalty for rape of children. These are only two examples. There have been positive fallouts as well. Because of the strong reporting of abuse in children's homes, government and the Supreme Court took notice of the situation.

With the advent of social media, the debates and discussions are sharper and often aggressive. Clearly children and their relationship with the media is an area that needs better understanding if the power of the media is to be harnessed for better realisation of children's rights.

This chapter discusses the state of children's news journalism in India and also analyses it in the larger context of the state of journalism in the country and seeks to analyse if this can be de-linked from children's news journalism. Children's news and child rights news have been used interchangeably in the chapter

ARTICLE 17, UN CONVENTION ON THE RIGHTS OF THE CHILD

States Parties recognise the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual, and moral well-being and physical and mental health. To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange, and dissemination of such information and material from a diversity of cultural, national, and international sources.

THE INTERNATIONAL FEDERATION OF JOURNALISTS (IFJ) DEVELOPED “GUIDELINES AND PRINCIPLES FOR REPORTING ON ISSUES INVOLVING CHILDREN”, 1998

Among their guidelines, they include the following:

1. **strive for standards** of excellence in terms of accuracy and sensitivity when reporting on issues involving children;
2. **avoid programming and publication** of images which intrude upon the media space of children with information which is damaging to them;
3. **avoid the use of stereotypes and sensational presentation** to promote journalistic material involving children;
4. **consider carefully the consequences** of publication of any material concerning children and shall minimise harm to children;
5. **give children, where possible, the right of access to media** to express their own opinions without inducement of any kind;
6. **use fair, open and straightforward methods** for obtaining pictures and, where possible, obtain them with the knowledge and consent of children or a responsible adult, guardian, or carer;
7. **verify the credentials** of any organisation purporting to speak for or to represent the interests of children...

Source: http://cscs.scu.edu/trends/v28/CRTv28n3_September2009.pdf

Some Statistics First

The analysis of children’s news is in the context of the fact that 39.33 per cent of India’s population is children. As per the 2016 National Press Day report in The Hoot (one of the foremost media watch platforms in South Asia), India has over 100,000 newspapers and periodicals.¹ These are registered periodicals in English, Hindi and other regional languages. India has over 830 24X7 news channels in English, Hindi and regional languages. That makes India one of the countries with the highest per capita penetration of news media. These numbers do not include the digital media platforms, which is the fastest expanding sector in the news media category now.

State of Children’s News Journalism: 2007 and 2018

In the context of quantum of children’s news journalism, there are no latest studies, but the Centre for Media Studies’ Media Laboratory conducted an internal study in 2007, shared with the author,² had the following key findings:

- Out of the total 720 news hours monitored with 431 hours of news time (the rest being advertisement and channel promotions),
- The time devoted to children’s news was 15.4 hours. This works out to less than 3.6 per cent.

The news channels monitored were: Aaj Tak, DD News, NDTV 24X7, Sahara Samay, Star News and Zee News. While Sahara Samay was the best performer with almost 6 per cent of news hour dedicated to children’s news, Star News dedicated 1.4 per cent to children’s news. Even DD News, the public broadcaster, had only 2 per cent of its time dedicated to children’s news.

TABLE 1: COVERAGE OF CHILDREN'S ISSUES CENTRE FOR MEDIA STUDIES, 2007

S.No	Story topics	Total	
		Time	%
1.	Health	42	4
2.	Education	48	5
3.	Crime	273	30
4.	Rights	14	1
5.	Sports	19	2
6.	Lifestyle trends	99	11
7.	Entertainment	17	2
8.	Human Interest	371	40
9.	Policy	16	2
10.	Accident	25	3
11.	Others	4	0
	Total	925	100

While human interest and crime stories topped the charts, child rights and policy issues affecting the children were abysmally low.

GEOGRAPHICAL BIAS OF NEWS COVERAGE AS PER THE CMS LAB STUDY OF 2007:

- Children living in rural India don't get any coverage on national news channels of the country
- Time devoted to stories with international origin accounts to about 2 per cent
- The coverage of issues focusing on children from other towns and cities is high i.e. almost half of the coverage time. While from Mumbai and other state and capitals, it has been low i.e. 8 per cent
- National news channels hardly provided a picture of the children from non-Hindi speaking part of the population
- Maximum time is provided to stories on children's issues from Delhi i.e. 28 per cent
- DD news gave maximum priority to stories from Delhi i.e. 77 per cent of its coverage time. While on the other hand ZEE News had not covered a single story from Delhi
- Almost all news channels except DD News had given priority to children related stories originating from other towns and cities

Has the situation improved eleven years later?

This author, as part of her fellowship on Early Child Development, from International Centre for Journalists, Washington DC, did a media scan of the children's news in 2018 and the broad findings remained almost unchanged from CMS Media Lab's 2007 study. In fact in many instances it had deteriorated:

- Religious polarisation i.e. Hindu Muslim conflict (real and imagined) had become the primary news item instead of everyday deprivation of Indians, including children. While children continue to constitute 40 per cent of the population, the news time devoted to them was still less than 4-5 per cent overall
- Violent crimes, sexual crimes, sensational items continued to command more attention from journalists and editors than everyday deprivation like food insecurity, healthcare failure, educational hurdles
- Policy changes that affect the children's lives barely got any coverage

- Worse, most children's reportage had been relegated to magazine and lifestyle section instead of hard news
- Regional news papers and digital media still did a better job than self-claimed national media (which continue to focus on Delhi and National Capital Region)
- In spite of the fact Three in five--or 9,034 of 15,379--persons trafficked in 2016 were children (below 18 years).³ Child trafficking barely got the attention it deserved

In the year September 2017-September 2018 (matching this author's fellowship period), the children's news items that garnered maximum media attention were:

1. Kathua rape case, where an 8-year old from Bakkarwal community was gang-raped and murdered in Kathua of Jammu and Kashmir.⁴ This got attention, only when some political leaders and local heavy-weights started demonstrating in support of the rapists
2. The reforms and development of Delhi government schools got a lot of attention too. Other than the good work, proximity and Delhi government's media engagement are reasons for the same
3. The shelter home scandal in Bihar's Muzzafarpur, where many children had been sexually violated, even killed⁵
4. The abysmally low learning levels amongst children, in spite of higher enrollment as exposed by Pratham's ASER report⁶

In the same period, the children's news items that almost got completely blacked out were:

1. Starvation death of three children in an East Delhi slum.⁷ The starvation deaths of children in Jharkhand also got minimal attention.⁸ The everyday deprivation of children falling from the news cycle has become a real concern
2. The changing of the 'No-Detention' policy of schools till class 8. It was never covered from the children's perspective, especially the lower-income, poor children's perspective
3. The revision in the definition of juvenile age, from 18 years to 16 years actually received regressive reportage, with many journalists and commentators supporting the revision

Guidelines for media reporting on children approved by the Hon'ble High Court of Delhi on 8.8.2012 in Writ Petition (Civil) NO 787 of 2012 adopted by the Council in its meeting held on 27.8.2012 at New Delhi

Media coverage on matters relating to children may have long term consequences on their overall development (physical, mental, psychological, emotional, moral, social, economic etc.), life and dignity; and lack of care by Media in this regard may entail real risk of children facing harm, stigma, disqualification, retribution etc. The privacy, dignity, physical and emotional development of children is of the utmost importance, which are to be preserved and protected at all times, while reporting/broadcasting/publication of news/programs/documentaries etc. on and for children.

The guidelines mentioned below are proposed in the backdrop of the existing legal framework enclosed as **Annexure-A**, to secure and protect the rights of children and to set-out the minimum parameters of responsibility to be borne by print and electronic media (hereinafter referred to as 'Media') in relation to reporting/broadcasting/publication of news/programs/documentaries etc. on and for children.

1. Meaning of terms used:

1.1 "Child" or "children" shall mean a person(s) who has/have not completed 18 years of age;

1.2 "Media" shall include, but not be limited to, any newspaper, magazine, news-sheet or electronic media.

2. PRINCIPLES:

2.1 Involvement of children in news/programs/documentaries etc. must evidently be editorially justified including from a child rights' perspective.

2.2 Media shall ensure that child victims of rape, other sexual offences, trafficking, drug/substance abuse, elopement, organized crimes, children used in armed conflicts, children in conflict with law and child witnesses etc. are automatically guaranteed anonymity for life.

2.3 Media must ensure that due consideration is given to a child's right to privacy and to prevent the child from being exposed to anxiety, distress, trauma, social stigma, risk to life & safety and further suffering in relation to reporting/broadcasting/publication of news/programs/documentaries etc. on and for children.

2.4 Media shall ensure that a child's identity is not revealed in any manner, including but not limited to, disclosure of personal information, photograph, school/institution/ locality and information of the family including their residential/official address.

2.5 Media shall not sensationalize issues or stories, especially those relating to children, and should be conscious of the pernicious consequences of disclosing/highlighting information in a sensational form and the harm it may cause to children.

2.6 Interviewing a child by the media:

This shall be governed by the following principles:

a) That the interview is in the child's best interest.

b) That the interview does not aggravate the child's situation further.

c) That the manner and content of the interview doesn't affect/interfere with the child's right to privacy.

d) That if the interview is in the child's best interest, the same shall be done under supervision and consent of the child's parent(s) or legal guardian, or in the alternative, the competent authorities for the child.

e) That while interviewing a child, his/her consent may be obtained, depending upon his/her age and maturity.

f) Frequent interviewing of a child must be avoided.

g) The child's refusal to be interviewed must be honored.

h) Before interviewing the child he/she must be duly informed about the purpose and manner of the interview.

4. The maternity entitlement programme had almost 50 per cent under-spending. And we know how maternity entitlement affects the new-born's health and the cognitive development of the child⁹
5. There was no follow up on television news, on the first anniversary of Gorakhpur Baba Raghav Das Medical College oxygen scarcity tragedy which had killed over 30 children over a weekend and 290 children over the month of August 2017¹⁰

It will be instructive to re-visit the take of some key child rights' champions on the state of journalism, that, this author spoke to, for a piece in NewsLaundry in September 2018¹¹:

- Ms Stuti N Kacker, the former Chairperson, National Commission for Protection of Child Rights (NCPCR), stated she was generally satisfied with the state of journalism around child rights. She felt there was adherence to the ethical guidelines on reporting on children. However, she also felt that in the Kathua rape case, the court and NCPCR had to step in to remind journalists that dead children had the same rights as the ones alive and hence taking the name of the child who was the victim of a gang-rape, was a violation. Her other major challenge was to get the entertainment media to adhere to the guidelines for the children working in the entertainment industry. "These guideline needs constant updating because the media programming keeps changing and we notice something is violated, following which, we have to pull up the producer and broadcaster or update the guidelines or both".

She felt most of print and television media and felt digital had an over-presence of opinions rather than reportage. On journalism that stood out, she felt Ambika Pandit's series in "Times of India" on young adults who are survivors of child sexual abuse was a must read.

- Prof Zubair Meenai, Director of Jamia Millia Islamia's Early Childhood Development Research Centre was much less appreciative. He found the state of journalism on children "quite sensationalist, bending towards sexual exploitation or abuse more than developmental issues. Children are portrayed as victims with no agency, no voice etc". He found the reportage mostly episodic and crisis-oriented rather than any long-term concerted engagement. He also felt the space and time given to reporting on children's issues was disproportionately less.

Meenai felt that the reporting ethics' guidelines were adhered more in violation than in compliance. Meenai felt there was a need to see more of everyday deprivation of child rights reported—but they should be reported in the context of the society and development—and not in a stand-alone way. "Considering we have fashion reporters, crime reporters, campus reporters, it is about time we have Child Rights' reporters too," he felt.

- Dr Rajan Sankar, Head of Nutrition at Tata Trusts, felt that the state of journalism on children and child rights left a lot to be desired. The reporting was mostly problem-centric and repetitive. It lacked the deep-dives on causes and solutions being implemented. There was also a lack of reportage on poverty, inequality and malnutrition, he felt.

Sankar also blamed the nutritionists who over-technicalised the sector with narrow concerns and isolated nutrition from the big questions of the society. He felt journalists had that opportunity to engage with the big questions and connect nutrition to the narrative.

Sankar felt that journalists should not give privilege to medical impact over social impact. Hence, narratives set by scientific journals, need not be the only reporting pegs. Journalists have their ears to the ground, closer to reality, and with this immense power, they can and should influence the research agenda as well as the policy and programmes, he advocated.

He felt that while violent crimes' against children were extracting the reportage and outrage in Indian journalism, the everyday deprivations, the silent killers like under-nutrition, and the challenges like cognitive under-development due to malnutrition, were still begging for attention. He would like to see more reporting on that, as well as more number of positive stories on innovations and progressive programmes in India and across the globe.

- Ms PN Vasanti, Director General of Centre for Media Studies, felt that the media had a very important role in both—the social and democratic life—but it didn't always live up to its responsibility. She felt not just news media, but even the entertainment wing of the Indian media wasn't treating children and child rights' concerns fairly. The entertainment media treated children as consumers, but not as citizens, she explained.

She explained this was because children's issues were not a priority in newsrooms, and that policy and parenting issues relating to children were dealt in lifestyle and magazine sections rather than the 'hard news' section.

Vasanti also felt that the social issues including child rights' were not a priority in Indian newsrooms. Reporters focusing on these issues didn't progress much in the career, unlike journalists who covered politics or economics. Hence, she felt, addressing the under-reportage/non-reportage of children's issues was directly connected to the power structure and priorities in various newsrooms. Hence, she would like newsrooms to prioritise social issues as well.

She also shared her disappointment that after their Andhra Pradesh study and journalism awards that they constituted, the child rights' reportage went up in many news publications, but it was few and far between. It appeared that the reporting was focused on nominating and submitting that single nomination in an effort to win awards. She has shunned TV completely but has a lot of faith in various digital platforms, as well as the revival of long-form journalism. "The Wire" was her then favourite when it comes to social issues, nuanced reportage and everything related to development. She would like to see more of regular deprivations of children and their families reported, rather than just the dramatic recreations of violent crimes against children. On her wish list are stories on hunger, malnutrition, and the Gorakhpur tragedy before it became a point of national discourse.

She would also like to see journalists reporting on social and development issues progressing in their careers in their respective news establishments. Only then would the abysmal reportage on children be addressed.

State of Public Interest Journalism in India

Not just children's news, even general public interest stories were shrinking in self-claimed national media. Public intellectual and anti-hunger activist, Prof Jean Dreze had done a two-month analysis of the Op-Eds in Hindu in 2006 and only 6 per cent was dedicated to social sectors like health, education, food security, water sanitation etc. This, coming from the lodestar of responsible journalism, i.e. The Hindu, was a major concern, quoted Paranjoy Guha Thakurta and Subi Chaturvedi.¹²

Senior journalist Ammu Joseph did a similar media scan of South Indian English newspapers and found food festivals, recipe books, diet and weight loss got much more coverage than persistent hunger and malnutrition.¹³

While India continues to rise in the Inequality Index and become obscenely unequal, the only reportage around inequality is when Oxfam releases its Inequality Report at the World Economic Forum in Davos in January every year.¹⁴ There is no follow-up even during the Budget presentation a month later, when allocations to policy commitments that will enhance inequality reduction could be done easily.

Even the Press Freedom Index and the substantive 'unfreedoms that' Indian press is afflicted with, the attacks on journalists, the shrinking editorial freedom, massive loss of jobs, barely gets the coverage by the press itself. As per the 2019 Press Freedom Index by the Reporters Without Borders (RSF), India has fallen a couple of ranks further and stands at 140 out of 180 countries, lower than Afghanistan and Sudan.¹⁵

Hence, not just children's news but journalism itself is in crisis. And reclaiming journalism as a public service, media as a public good is paramount.

Why are Newsrooms Blinding Out Children's News in One of the Youngest Countries of the World?

Some of the major reasons for the crisis in journalism and, de facto, children's new journalism too are:

- Corporatisation of media has meant, bottom line, media narrative that furthers the owners' business interest has become more important than speaking truth to power
- Advertisement based revenue model in most mainstream news media has meant, advertisers' interests have become primary, more important than the consumers'/citizens' interest. This has also meant, the marketing department has started interfering in the editorial functions and the editorial functions and powers were shrinking. Media critique platform NewsLaundry has a tag-line, "When advertisers pay, advertisers are served, when the public pays, the public interest is served"¹⁶
- Elitism in newsrooms is also a cause of concern. Most English newsrooms are republics of South Delhi and South Mumbai, with reporters and editors coming from privileged backgrounds. In case of Hindi newspapers and news channels, the newsrooms are dens of upper caste journalists. Lack of diversity in news rooms directly affects the diversity in perspective and diversity in stories. No wonder, the lifestyle of the rich and mighty, their multi-million dollar marriages got more coverage than stories of everyday deprivation and brutalities suffered by Indian citizens
- Shrinking of reporting budgets has meant, meaningless studio-based debates (in case of television) and opinion pieces (in case of print) gets passed off as journalism
- Hierarchy in news rooms where politics and business journalism trumps over social sector and development journalism. And the politics, policy and economics aspect of social issues also gets under-reported as a result
- In case of children's news journalism, most of it has been relegated to lifestyle and magazine section, rather than hard news like economics and politics. A similar dangerous trend is visible in health journalism, where wellness and lifestyle stories are getting more coverage than budget allocation human resources' crisis in healthcare sector

Can the News-Room Blind-Spots be Fixed or is All Lost?

The emergent digital media revolution provides much hope in this context. While it is still nascent and there is much chaos in the sector, since its operating cost is much lower, it can spend money on reportage and some real journalism. Some digital media platforms have gained immense credibility and have dedicated sections on social issues like Scroll, The Wire etc. But digital media as a whole, has to move away from click-bait journalism, figure out its revenue model and stabilise.

Media literacy in the country is very low. While citizens spend a lot to access news media, the difference in fake news and real news, the importance of choosing news media platforms that report people's living realities is still some way off. Every news consumer needs to be media literate and media watcher. India is long way off from that stage but some progress in media watch and media literacy is happening. Readers have to shun fake news peddlers, agenda propagandists, star-gazers. Similarly, readers have to engage with and support news and news platforms that speak to their living realities.

South Africa is presenting a very interesting template here. One of the biggest corruption expose' the Guptas' Heist, was done by one intrepid journalist, Ama Bughane, initially with crowd-funding.¹⁷ A story that resulted in exposing state capture, one president lost his job, was bank-rolled by readers, citizens initially. That provides hope. South Africa also happens to be one of most unequal countries, but it has a very progressive constitution and, is called the most 'hopeful democracy'. So the largest democracy i.e. India, can learn a few things from the most hopeful democracy.

Within news rooms, the hierarchies need to be re-organised. Children's rights' reportage, social issues' reportage does not provide career progression to the journalists. Hence it is important to re-look at news rooms' structures and hierarchies. Child rights' reporters need to be given the same opportunities as the politics and business journalists.

Fellowship model journalism, while encourages intensive reportage on an under-reported topic, it is mostly till the duration of the fellowship, hence sustainable changes, like editorial commitment to child rights' issue as part of the journalism institutions, is necessary. Which goes back to readers' engagement and demanding such stories and journalism/news-rooms' commitment.

The child rights' advocates have to move away from episodic engagement with journalists just to get their work reported. They have to stop over-technicalising issues so that, the issues can continue to remain public interest concerns. This point is explained by Anton Harber, the founder-editor of "Mail and Guardian" and one of the leading voices in global investigative journalism. He says, "If health, education, water sanitation, food security, inequality, maternity entitlement issues are covered, then all bases of child development is covered. Hence the reportage, treatment should be on the broader issues of society and policy questions that impact children and their lives."¹⁸

Hence child rights' advocates' engagement with journalists should be long term and to build perspective, not Public Relations. Child rights advocates should not encourage PR (public relations or press release) journalism. And they should also stand in support with journalists in their struggles for press freedoms and journalists' safety. Because press freedom is not just a question of press and journalism, but of democracy.

And finally to quote senior journalist and media-watcher Urmillesh Urmil, "Media is a function of the equality, inequality, perversity and morality of the society. If the society is deeply unequal, exclusive, it will be impossible to expect a free, inclusive, diverse, non-heirarchical media eco-system."¹⁹

The Oscar winning movie Spotlight²⁰ (on Boston Globe's expose of child sexual abuse by the Catholic clergy) has a dialogue, "It takes a village to raise a child." It also takes a village/society/country to fix the child rights' journalism.

Endnotes

- 1 Dubbudu, Rakesh. 28 May 2018. More than a Lakh Newspapers & Periodicals are Registered in the Country. Factly. <https://factly.in/indian-newspapers-more-than-one-lakh-newspapers-periodicals-registered-in-the-country/>. Last accessed on 30 October 2019.
- 2 Centre for Media Studies' Media Laboratory. 2007. Study on Children's Issues in the Media shared with the author.
- 3 Paliath, Shreehari. 11 July, 2019. 3 in 5 People Trafficked Were Children. IndiaSpend. <https://www.indiaspend.com/3-in-5-indian-adolescents-vulnerable-to-abduction-sexual-slavery/>. Last accessed on 30 October 2019.
- 4 Shuja-ul-Haq. 4 March, 2018. Kathua rape case: 2 BJP ministers attend rally in support of accused. India Today. <https://www.indiatoday.in/india/story/kathua-rape-case-2-bjp-ministers-attend-rally-in-support-of-accused-1181788-2018-03-04>. Last accessed on 30 October 2019.
- 5 Swain, Biraj. 2018. Childline In Jhansi: Rescuing Children Amidst The Institutionalisation Debate. Youth ki Awaaz. <https://www.youthkiawaaz.com/2018/08/childline-in-jharkhand/>. Last accessed on 30 October 2019.
- 6 Nanda, Prashant K. 17 January 2019. What ASER says about quality of learning in India. Live Mint. <https://www.livemint.com/Education/UIIkNLOsCVkSppf6RW4FbN/What-ASER-says-about-quality-of-learning-in-India.html>. Last accessed on 30 October 2019.
- 7 Bhattacharya, Sompreet. 26 July 2018. In heart of capital, three siblings died of starvation. Times of India. <https://timesofindia.indiatimes.com/city/delhi/death-of-3-delhi-siblings-doctors-confirm-children-died-of-starvation/article-show/65137443.cms>. Last accessed 30 October 2019.
- 8 Roy, Saurav. 3 April, 2019. Starvation deaths emerge as key poll issue in Jharkhand as ration card woes keep vulnerable groups hungry. First Post. <https://www.firstpost.com/politics/starvation-deaths-emerge-as-key-poll-issue-in-jharkhand-as-ration-card-woes-keep-vulnerable-groups-hungry-6381851.html>. Last accessed on 30 October 2019.
- 9 Swain, Biraj. 9 Months ago. Budget 2019: Show Me the Money In Health And Health-Tech. <https://www.youthkiawaaz.com/2019/02/budget2019-show-me-the-money-in-health-and-health-tech/> [Expert talks about the under-spent on Maternity Entitlement programme in the video]. Last accessed 30 October 2019.
- 10 Rashid, Omar. 12 August 2017. 30 Children Die in Gorakhpur Hospital. The Hindu. <https://www.thehindu.com/news/national/other-states/30-children-die-in-gorakhpur-hospital/article19475912.ece>. Last accessed 30 October 2019.
- 11 Swain, Biraj. 3 September, 2018. Why newsrooms need to step up their everyday reportage on child rights. Childhood Matters Season Finale. News Laundry. <https://www.newslandry.com/2018/09/03/childhood-matters-violent-crimes-children-gone-up-focus-everyday-reportage>
- 12 Guha Thakurta, Paranjay and Chaturvedi, Subi, Food and nutrition justice: How to make it more newsworthy? From edited volume Standing on the threshold: Food Justice in India, IDS Bulletin Special Issue, Volume 43, Issue 1, Wiley-Blackwell
- 13 Ammu Joseph cited in Guha Thakurta, Paranjay and Chaturvedi, Subi, Food and nutrition justice: How to make it more newsworthy? From edited volume Standing on the threshold: Food Justice in India, IDS Bulletin Special Issue, Volume 43, Issue 1, Wiley-Blackwell
- 14 Oxfam-India. 2019. Public Good or Private Wealth? Oxfam Inequality Report The India Story. https://www.oxfamindia.org/sites/default/files/Davos-India_Supplement.pdf. Last Accessed on 30 October 2019
- 15 Reporters Without Borders. 2019. Index Details- Data of Press Freedom Ranking 2019. https://rsf.org/en/ranking_table?sort=asc&order=Countries%20%26%20regions. Last accessed on 30 October 2019.
- 16 <https://www.newslandry.com/author/biraj-swain>
- 17 'Media Bol' Episode 47: Fault Lines in Our Democracy and Free Media. <https://thewire.in/video/media-bol-episode-47-fault-lines-democracy-free-media>
- 18 Biraj Swain. 9 March, 2018. News Laundry. Reader engagement is key to investigative journalism today: Anton Harber <https://www.newslandry.com/2018/03/08/investigative-journalism-guptas-heist-south-africa-anton-harber> Last accessed on 30 October 2019
- 19 Media Manthan- India's position in the world Press Freedom Index <https://www.youtube.com/watch?v=oepnLJaGrXs>
- 20 Spotlight. [https://en.wikipedia.org/wiki/Spotlight_\(film\)](https://en.wikipedia.org/wiki/Spotlight_(film))

HAQ: Centre for Child Rights was founded in 1998. It was registered under the Societies Registration Act, in June 1999. The recognition, protection and promotion of three rights form the cornerstone of HAQ's work. They are: Right to Survival, Right to Childhood and Right to Equal Opportunity.

HAQ's strength lies in its capacity to straddle micro and macro issues impacting children, undertake research and documentation to generate new knowledge and evidence, bring hands on experience into policy advocacy nationally as well as internationally, and strengthen governance for children by holding the duty bearers accountable.

For HAQ, ensuring accountability is not only about monitoring performance but also about strengthening the existing systems through building capacity of key stakeholders to generate a timely and effective response and empowering the rights holders (children) to understand and seek their citizenship rights.

In 2019 HAQ completes 20 years. This Status Report is yet another milestone in HAQ's journey over these years. It marks the beginning of a new phase for the organisation and a renewed commitment to the cause of children. It also coincides with the 30 years of UNCRC.

List of Publications

Report of the Child Marriage Prevention Programme 2015–2019 | Implementation of the POCSO Act, Study of Cases of Special Courts in Delhi & Mumbai 2012–2015 (2018) | Children's Access to Justice and Restorative Care – Fact sheets (2018) | Child Marriage No Never: Without My Consent Never Ever, West Bengal (2017) | Child Marriage No Never: Without My Consent Never Ever, Rajasthan (2017) | Upon a Beam of Light Helping Girls at Nirmal Chayya Find The Spark Within (2016) | Lost Childhood Caught in Armed Violence in Jharkhand (2016) | Prevention of Child Marriage: Impact on Girls (2016) | Child Trafficking in India Report (2016) | Strengthening Existing Systems for Prevention of Child Marriage (2015) | Report of the National Consultation on Prevention of Child Marriage (2015) | Budget for Children INDIA 2008–09 to 2013–14 (2015) | Children & Their Rights in Mining Areas– A Community Resource Guide (2014) | The South Asian Report – On the Child–Friendliness of Governments (2013) | International Colloquium on Juvenile Justice – A Report (2013) | Children and Governance (2012) | India–Child Rights Index. (2011) | Twenty Years of CRC– A Balance Sheet (Volumes I, II and III) (2011) | Budget for Children, set of seven publications on child budget analysis for India, Andhra Pradesh, Assam, Himachal Pradesh, Orissa, Uttar Pradesh and West Bengal (2009) | Kandhmal's Forgotten Children: A Status report | India's Childhood in the "Pits": A Report on the Impacts of Mining on Children in India | Blind Alley: Juvenile Justice in India (2009) | National Consultation on 'Countering Challenges in Adoption: Combating Child Trafficking' (2009) | Proceedings of the International Colloquium on Children and Governance: Holding the State Accountable (2009) | Still Out of Focus: Status of India's Children (2008) | Handbook on Children's Right to adequate Housing | Combating Child Trafficking | Budget for Children, set of four publications on child budget analysis for India, Andhra Pradesh, Himachal Pradesh and Orissa (2007) | Child Protection (A Handbook for Panchayat Members in English and Hindi) | Status of Children in India Inc. (2005) | Says a child... Who Speaks for My rights? (A series of booklets analysing parliamentary questions and debates from 2003 to 2007 in English and Hindi) | Stop Child Trafficking (A Handbook for Parliamentarians) | Children in Globalising India: Challenging our Conscience (2003) | Children Bought and Sold: We can stop It! (Booklet on Child Trafficking in Hindi and English) (2003) | Children and Right to Adequate Housing: A Guide to International Legal Resources (2002) | India's Children and the Union Budget (2001)

