

# Child Rights in India

## Joint Stakeholder's Report on the Universal Periodic Review IV of India

Submitted By:

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*(On Behalf of Organisations, Coalitions & Networks)\**

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- Enfold Proactive Health Trust, Bangalore, Karnataka
- Centre for Social Equity and Inclusion (CSEI), New Delhi
- Centre for Social and Behaviour Change Communication (SBCC), Mumbai, Maharashtra
- Human Rights Defender's Alert India (HRDA)
- Manipur Alliance for Child Rights, Manipur
- People's Watch, Madurai, TamilNadu
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## Introduction

India is home to the world's largest number of children with nearly 36.68 per cent of its estimated 1.27 billion population under the age of 18. During the UPR III cycle, child rights thematic area received a total of 73 recommendations. Of these, Government of India (GOI) has **accepted 59** and **noted 14**. After accepting several recommendations during UPR 3 on the welfare of children, the status and condition of children in India have not seen any meaningful improvement. This UPR cycle comes at a time when whole world is battling against the COVID-19 and it is needless to say, children have been pushed beyond the margins during such challenging times. Clubbed with COVID related challenges, there remain significant gaps exist between the political, legal commitments and the outcomes for children and their lives.

## Methodology

This report is specific to children's rights. It is based on various situational reports presented by the Government of India from time to time, newspaper reports, findings of the academic journals and rich experience of organisations while working on the issue to promote child rights in all public discourses.

# Issues and Recommendations

## 1) Birth Registration

### *Issues and Impacts*

- Even after 40 successive years of implementation of The Registration of Births and Deaths Act 1969, the current statistics indicate that registration figures are as low as 55 per cent of births and 46 per cent of deaths.
- As of 2015-16, 3 in 5 children under the age of five years, which makes it to only 62.3 per cent of the total population of children in the country, have their births registered and possessed a birth certificate.<sup>1</sup> This is a significant improvement from 26.9 per cent in 2005-06.<sup>2</sup>
- It has also been found that states that have poor infrastructure in registering infant deaths also have a significantly higher infant mortality rate.<sup>3</sup>
- The situation of birth registration has improved in the National Family Health Survey-V, but many states are yet to achieve universalisation.

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<sup>1</sup> National Family Health Survey (NFHS) – IV, 2015-16. Available at: <http://rchiips.org/nfhs/NFHS-4Reports/India.pdf>

<sup>2</sup> Scroll, 'Almost 38% of Indian children under the age of five don't have a birth certificate', 4 January 2020. Available at: <https://scroll.in/article/948667/almost-38-of-indian-children-under-the-age-of-five-dont-have-a-birth-certificate>

<sup>3</sup> India Spend, 'Birth Certificates Are Citizenship Proof, Govt Says. But 38% Under-5 Children Don't Have One', 3 January 2020. Available at: <https://bit.ly/3kppx3L>

- Almost all districts of Bihar and some districts of Meghalaya and Nagaland showed comparatively low levels of birth registration with respect to other parts of the country.<sup>4</sup>
- The Centrally Sponsored flagship scheme ‘*Beti Bachao Beti Padhao*’,<sup>5</sup> has seen major budget cuts by the Government of India.<sup>6 7</sup>
- Children without a birth certificate are unable to prove their age, they are more vulnerable to violence, abuse and exploitation. These girls and boys remain at risk of being trafficked, recruited into non-state armed forces or conflict groups or forced into early marriage or child labour. If they come into contact with the justice system, they may be prosecuted as adults and exposed to even more violence.<sup>8</sup>
- In the cumulative backdrop of the recent Citizenship Amendment Act (CAA) 2019 and the proposed National Register of Citizens (NRC) process — on which the Government has not yet communicated a cogent plan of action — it is feared that many children will be left out of the process and possibly deprived of citizenship due to lack of proof of birth.

### **Recommendations**

- The expertise of trained professionals at the grassroots level, transparent and smooth registration systems, less complicated processes and awareness campaign need to be ensured to universalise the birth registration in the country.
- Strengthen the existing mechanisms to ensure 100% birth registration by appointing adequate manpower and ensuring sufficient resource allocation.

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<sup>4</sup> “*Birth, death registration improves across states: NFHS-5*”; NB Devakrishna, Besra Bishwajeet & Mishra Nand Lal; January 06, 2021; Down to Earth; <https://www.downtoearth.org.in/blog/governance/birth-death-registration-improves-across-states-nfhs-5-74920>

<sup>5</sup> The scheme is aimed to improve sex ratio and mandates the registration of birth to avail the benefits of this scheme.

<sup>6</sup> HAQ: Centre for Child Rights, ‘Children in The Trillion Dollar Economy: Budget for Children 2019-20’. Available at: <https://bit.ly/31AsUxv>; see also, HAQ: Centre for Child Rights, ‘Budget for Children 2020-21: Together with ALL, Development for ALL, the Trust of ALL (EXCEPT) CHILDREN’. Available at: <https://bit.ly/2J0kkS7>

<sup>7</sup> As per the 5th report of the Parliamentary Committee on Empowerment of Women dated December 2021, the Ministry of Women and Child Development has earmarked a budget of INR 50 lakh per district for implementation of BBBP, of which 50% (INR 25 lakh) is for awareness and innovation at District level. The scheme is reported to be currently implemented in 405 districts fully with multi-sectoral interventions including advocacy and media campaign, while the remaining 235 districts out of the total 640 Census districts are covered with a nationwide media campaign. Although, the Committee notes with dismay that out of Rs. 622.48 crore released to the States between 2014-15 and 2019-20, “only 25.13% of the funds, i.e. Rs. 156.46 crore have been spent by the States reflecting not up to the mark performance of the scheme,” the Committee also recommends the government to focus on planned expenditure allocation for sectoral interventions in education and health through BBBP. (Empowerment of Women Through Education With Special Reference to ‘Beti Bachao-Beti Padhao’ Scheme; Fifth Report; Committee of Empowerment of Women (2021-22); Seventeenth Lok Sabha; [http://164.100.47.193/lsscommittee/Empowerment%20of%20Women/17\\_Empowerment\\_of\\_Women\\_5.pdf](http://164.100.47.193/lsscommittee/Empowerment%20of%20Women/17_Empowerment_of_Women_5.pdf)

<sup>8</sup> <https://www.unicef.org/protection/birth-registration>

## 2) Child Labour

### *Issues and Impacts*

- In terms of available data for child labour at national level, Census 2011 is the last set of data available. A total of 10.1 million children in the age group of 5-14 years are involved in some kind of labour.<sup>9 10 11</sup>
- Children up to 18 years constitute 5% of the total workforce, with those up to 14 years being 2.1% and children between 15 and 18 years amounting to 2.83%.<sup>12 13</sup>
- About 4.5 lakh child labours between the age group of 10-14 are observed to be engaged in various e-waste (electronic waste) activities, without adequate protection and safeguards in various yards and recycling workshops around country.<sup>14</sup>
- Many of the child workers migrate within the country either as companions to their parents or independently, without a parent or a guardian. Domestic employment, hotels, brick kilns, mining, quarrying, agriculture, export-oriented industries, fireworks, etc., are the major sectors employing these children as child labour.<sup>15</sup>
- In 2017, the PENCIL Portal was established by the GoI to ensure effective implementation of the Child Labour (Prohibition and Regulation) Act 1986. The National Child Labour Programme (NCLP) scheme has further expanded to 312 districts in the country where the Government aims at facilitating rescue missions and shift more children engaged in child labour to *Kendriya Bal Shramik Vidyalayas*.<sup>16</sup>
- For the purpose of managing the overall functioning of NCLP and PENCIL Portal, the Ministry of Labour and Employment (MoLE) constituted a Task Force, whose first meeting was held on 17 October 2018.<sup>17</sup>
- It is expected that COVID-19 and subsequent economic distress will have increased the risk of child labour. The closure of 1.5 million schools due to the pandemic and lockdowns in India has impacted 247 million children enrolled in elementary and

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<sup>9</sup> Census 2011

<sup>10</sup> Proportion of child workers in the 5–9 years' age group increased from 14.6 per cent in 2001 to 24.8 per cent in 2011.

<sup>11</sup> The proportion of marginal workers who were students had increased from 2.5 million in 2001 to 3.5 million in 2011.

While 36.2 per cent of the marginal workers were students in 2001, the same figure stood at 60.3 per cent in 2011

<sup>12</sup> "State of Child Workers in India: Mapping Trends"; UNICEF & V.V. Giri National Labour Institute

<sup>13</sup> Children between 14-17 years engaged in hazardous work account for 62.8% of the India's child labour workforce, 10% of whom are hired in family enterprises. ("World Report on Child Labour 2015: Paving the way to decent work for young people"; [https://www.ilo.org/ipec/Informationresources/WCMS\\_358969/lang-en/index.htm](https://www.ilo.org/ipec/Informationresources/WCMS_358969/lang-en/index.htm))

<sup>14</sup> "Over 4.5 lakh child labours engaged in e-waste activities in India: ASSOCHAM study"; The Economic Times; April 21, 2014; <https://economictimes.indiatimes.com/news/politics-and-nation/over-4-5-lakh-child-labours-engaged-in-e-waste-activities-in-india-asso-cham-study/articleshow/34043490.cms?from=mdr>

<sup>15</sup> "Internal Migration and Child Labour in India"; Raashid Shah; <https://sprf.in/internal-migration-and-child-labour-in-india/>

<sup>16</sup> NDTV, "12.8 Lakh Children "Mainstreamed" Through National Child Labour Project: Minister", 20 November 2019. Available at: <https://bit.ly/34oluhn>; *Kendriya Bal Shramik Vidyalayas* are Central Schools for Child Labourers in India.

<sup>17</sup> V.V. Giri National Labour Institute, 'Child Hope', July-December 2018. Available at: <https://vvgli.gov.in/sites/default/files/Child Hope July - December 2018 6-2-2019.pdf>

secondary schools and added to the risk of them slipping into child labour and unsafe migration.<sup>18 19 20</sup>

### **Challenges in implementation**

- The inclusion of provisions in the CLPRA that allow for children to work in family based occupations<sup>21</sup> will prove detrimental to all efforts to curb child labour.<sup>22</sup>
- While welcoming the prohibition of child labour up to the age of 14 years, and the inclusion of children in the 15-18 years within the ambit of the law, child rights organizations and activists working on the prevention of child labour were opposed to some of the other amendments introduced in 2016 to the Child Labour (Prohibition and Regulation) Act 1986.<sup>23</sup>

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<sup>18</sup> <https://www.unicef.org/india/press-releases/child-labour-rises-160-million-first-increase-two-decades>

<sup>19</sup> The ILO and UNICEF report warns that globally, 9 million additional children are at risk of being pushed into child labour by the end of 2022 as a result of the pandemic. A simulation model shows this number could rise to 46 million if they don't have access to critical social protection coverage. ( International Labour Office and United Nations Children's Fund, Child Labour: Global estimates 2020, trends and the road forward, ILO and UNICEF, New York, 2021; [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---ipec/documents/publication/wcms\\_797515.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_797515.pdf)

<sup>20</sup> A study conducted by the Campaign Against Child Labour (a national network of Civil Society Organisations) in 24 districts in TamilNadu shows an increase in child labour during the pandemic from 28.2% to 79.6%. The study is based on a rapid survey conducted with 818 children, titled "COVID 19-Reversing the situation of child labour". Children were found working in bakery shops, book stalls, two-wheeler service workshops, newspaper distribution, ration shops, vegetable shops, domestic helpers. 94% said they are pushed to work due to economic crisis. A few are working to buy smartphones.

<sup>21</sup> Section 3 of the Bill outlines the circumstances under which child labour is legal permitting children to work in order to help their family, or their "family enterprises" or "as an artist in an audio-visual entertainment industry". Further, since the Bill does not define the hours of work or the site of work in the so-called "family enterprises", and most occupations are not hazardous, children may be engaged range of family based activities - weaving, pottery, bidi or even to a plastic sheet near a garbage dump or even a home-based brothel as is common among many communities in the country. Is that what the government means when it says - *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...* (PIB release 16 May 2015) as long as they work "outside of school hours or during vacations". By implication, this law restricts children to traditional caste-based occupations, reinforces caste based occupations and perpetuate social injustice as most family based occupations in India are caste based, and children are already engaged in them. The law legalises this.

In 2015, the Government of India relaxed restrictions on their Child Labour Prohibition Act and permitted children below the age of 14 to work in family businesses and the entertainment industry (excluding circuses) to create "a balance between the need for education for a child and reality of the socio-economic condition and social fabric in the country (Reporter, BS. "Govt. to Allow Children to Work in Family Firms, Film Industry." ; May 14 2015; Business Standard; [http://www.business-standard.com/article/economy-policy/govt-to-allow-children-to-work-in-family-firms-film-industry-115051301405\\_1.html](http://www.business-standard.com/article/economy-policy/govt-to-allow-children-to-work-in-family-firms-film-industry-115051301405_1.html))

<sup>22</sup> The regressive amendment to the child labour legislation has made it difficult to identify the children involved in various unorganised sector labour workforce. The provision which allows children to assist their family enterprises after school hours and during vacations has made children vulnerable more than ever. Moreover, the loosely drafted definition of family enterprises has made situation more exploitative for children as there is no robust monitoring mechanism in place for the proper implementation of the amended CLPRA. A closer look into the aspect of inspection into child labour cases have also been decreasing every year, leave alone the low number of prosecutions and convictions in such cases. The situation becomes much more serious if one is to take into account the children who have been able to come out of child labour.

<sup>23</sup> An amendment which, at first glance, appeared progressive, but was completely riddled with flaws on a closer reading. The Amendment Act reduced types of hazardous occupations from a total of 83 to include just mining, explosive and occupations mentioned in Factory Act. Additionally, Section 4 of the Act was further changed to allow for changes in list of hazardous occupation at the discretion of governmental agencies. The most regressive change was to allow children to work in their family enterprises after school hours or during vacations. This could range from occupations of weaving, making bidi etcetera and definitely puts additional burden on children. See, The Hindu, 'A law that allows child labour', 10 August 2016. Available at: <https://bit.ly/3matnxW>

- The inspections, rescue and prosecution into child labour cases have also been a cause of concern drawing a grim picture of the implementation of CLPRA.<sup>24</sup>
- The NCLP project since its inception in 1988 has managed to rescue around 1.2 million children which tells about how child labour escapes from the eyes of the state and manages to reproduce its presence across sectors.<sup>25</sup>
- A dismal state of rescue is reflected by the PENCIL portal since its inception in 2017 which identified 1.7 lakh children who were employed as child labour and needed to be rescued.<sup>26</sup>
- The budgetary allocation towards NCLP has also seen a consistent decline over the years.<sup>27 28 29</sup>

### **Recommendations**

- Review and update data collection mechanisms on child labour to enable better targeting of initiatives.
- A complete ban on all forms of child labour. No child up to 18 years should be allowed or forced to work in family enterprises even after school hours or during vacations.
- The strict implementation of provisions of Child Labour (Prohibition and Regulation) Amendment Act, 2016. There should be adequate mechanisms to monitor the involvement of children as child labour at small, medium and large-scale enterprises.

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The concern is that the retention of the proviso allowing children to work within families pushes children into caste-based occupations and also makes it difficult to identify children involved in the various unorganized sector labour force.

<sup>24</sup> Only 1168 prosecutions were launched in the year 2019-20 toward the violation of CLPRA, out of which 690 convictions were made in various States. Source: Annexure referred to in reply to parts (a) to (d) of Lok Sabha unstarred question no. 108 for 18.11.2019 regarding child labour

<sup>25</sup> Shihabudeen Kunju S, 12.8 Lakh Children 'Mainstreamed' Through National Child Labour Project: Minister. Url: <https://www.ndtv.com/education/12-8-lakh-children-mainstreamed-through-national-child-labour-project-nclp-minister-2135694>.

<sup>26</sup> PENCIL Portal. Url: <https://pencil.gov.in>.

<sup>27</sup> The cost of implementing PENCIL as per the 2016 annual budget norms available on the PENCIL web portal ([https://pencil.gov.in/uploads/annual\\_budget/ANNUALBUDGET2016.pdf](https://pencil.gov.in/uploads/annual_budget/ANNUALBUDGET2016.pdf)) is Rs. 30 Lakh per District. This amounts to Rs. 84.98 Crores for 319 districts covered under PENCIL, assuming that all 319 districts do not have a vehicle, as otherwise the cost would go up. With the NCLP Budget for 2019-20 going down in 2019-20, only reinforces the lack of commitment to address the problem and assumes that children working in family enterprises require no monitoring. (Source: Children in the 'Trillion Dollar Economy' Budget for Children 2019-20; HAQ: Centre for Child Rights; <https://haqrc.org/wp-content/uploads/2019/07/haq-budget-for-children-2019-20.pdf>)

<sup>28</sup> The budget for the National Child Labour Programme (NCLP) has been drastically reduced by 75 per cent in the Union Budget 2022-23 with a total allocation of INR 30 Crore only. This significant reduction must be seen in the light of year 2021 declared as the International Year for the Elimination of Child Labour by the United Nations General Assembly while acknowledging the magnitude of child labour. (Source: "Pushed & Juggled Beyond Margins: Budget for Children 2022-23; HAQ: Centre for Child Rights; <https://www.haqrc.org/wp-content/uploads/2022/02/haq-BfC-2022-23-Analysis.pdf>)

<sup>29</sup> Counterview Representative, *Decline in Union budget for eradicating child labour, encouraging girl child schemes*. Url: <https://www.counterview.net/2019/07/decline-in-union-budget-allocation.html>.

- A constant review and amendment to the list of hazardous and non-hazardous occupations and process as mentioned in the Child Labour (Prohibition and Regulation) Amendment Act, 2016.
- The scope of the right to free and compulsory education be expanded to all children up to the age of 18 years. Quality education and entitlements like free books, uniforms, mid-day meals etc. must be made accessible to the last mile for all children.
- Children of migrant workers must be protected from becoming potential child labour. The benefit of schemes for migrant workers must be made accessible to all such families and free education of their children must be ensured.

### **3) Sexual Violence and Crimes Against Children**

#### ***Issues and Impacts***

- A total of 1,28,531 cases of Crimes Against Children were reported in 2020, out of which, 38.8% cases were of sexual offences against children registered under the Protection of Children from Sexual Offences (POCSO) Act and child rape.<sup>30</sup>
- There were 42.6% cases reported under the crime head 'Kidnapping and Abduction' in the year 2020.<sup>31</sup>
- There is a significant increase of 44.81% in the incidences of sexual offences against children between 2017 to 2020.<sup>32</sup>
- As per NCRB, Uttar Pradesh, Madhya Pradesh, Maharashtra, Delhi, and Bihar accounted for over 51 per cent of all crimes against children in the country in both 2018 and 2019.<sup>33</sup>

#### ***Challenges in implementation***

- Implementation of the POCSO Act remains poor.<sup>34</sup>

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<sup>30</sup> Crime in India Report, 2020; National Crime Records Bureau

<sup>31</sup> Crime in India Report, 2020; National Crime Records Bureau

<sup>32</sup> Crime in India Report, 2017 to 2020; National Crime Records Bureau

<sup>33</sup> Ibid; see also, India Today, '109 children sexually abused every day in India in 2018: NCRB', 16 January 2020.

Url: <https://www.indiatoday.in/india/story/109-children-sexually-abused-every-day-india-2018-1636160-2020-01-12>

<sup>34</sup> India has enacted the Protection of Children from Sexual Offences (POCSO) Act 2012 to stringently deal with the menace of child sexual abuse. However, the implementation of the Act remains unsatisfactory throughout the country. Research studies conducted by the Centre for Child and the Law (CCL) of the National Law School of India University (NLSIU) Bengaluru of the 2,788 judgments of Special Courts in five states (Source: CCL-NLSIU, 'Implementation of the POCSO Act 2012 by Special Courts: Challenges and Issues Based on CCL-NLSIU's Studies on the Working of Special Courts in Five States', 2018. Available at: <https://www.nls.ac.in/ccl/publications/POCSOIMPLEMENT2018.pdf>) and a study conducted by HAQ: Centre For Child



- The Supreme Court took *suo moto* cognizance of the issue in the case *In Re Alarming Rise in The Number of Reported Child Rape Incidents*<sup>35</sup> and pointed out the poor implementation of the POCSO Act.<sup>36</sup>
- In almost 99% of cases of sexual offences against children, neither the interim compensation nor the final compensation has been provided.<sup>37 38</sup>
- In order to protect privacy and confidentiality of the victims, public access to information and data in cases of sexual crimes has increasingly become a challenge. In many States and UTs, orders and judgements in matters under the POCSO Act are no longer being uploaded on the e-Courts portal. Not only does this restrict the right to information of the parties in a case, but also hinders bona-fide research, review and social audits that are necessary for good governance.<sup>39 40</sup>
- Cases of “Romantic Relationships” seldom get documented and computed as such.<sup>41</sup>

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Rights and the Forum Against Child Sexual Exploitation (FACSE) of the 1,957 judgments in Delhi and Mumbai (HAQ: Centre for Child Rights and Forum against Sexual Exploitation of Children (FACSE), ‘Implementation of the POCSO Act-Goals, Gaps and Challenges, Study of Cases of Special Courts in Delhi & Mumbai (2012 - 2015)’, 2017. Available at: <http://haqrc.org/publication/implementation-pocso-act/>) both indicate that the implementation of the POCSO Act in the areas covered by the studies is poor and the law is not followed in letter and in spirit.

<sup>35</sup> *Suo moto* W.P. (Crl) No.-01 of 2019.

<sup>36</sup> This report shows a shocking state of affairs. In 20% of the cases, investigation is not completed within one year. Virtually, no support persons are provided and no compensation is paid to the victims. Almost two-third of the cases are pending trial for more than one year. It appears that at all stages of dealing with POCSO cases commencing with the investigation up to the stage of trial, the time lines stipulated under the Act have not been complied with. [Excerpts from the Court Order dt. 13-11-2019 in *Suo moto* W.P. (Crl.) 01 of 2019].

<sup>37</sup> Report presented by Mr. Surinder S. Rathi, Registrar, Supreme Court of India in *Suo moto* W.P. (Crl.) 01 of 2019, 13 November 2019. Available at: <https://bit.ly/3ooV0pc>

<sup>38</sup> 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. (“*Sexual Abuse of Children and Child Protection Challenge*”; Ali Bharti; India’s Children Continue to Challenge Our Conscience: A Status Report on Children; 2019; HAQ: Centre for Child Rights; Url: [indias-children-continue-to-challenge-our-conscience.pdf](https://indias-children-continue-to-challenge-our-conscience.pdf) (haqrc.org))

<sup>39</sup> “#Data4Justice - Unpacking Judicial Data to Track Implementation of the POCSO Act in Assam, Delhi & Haryana (2012 to April 2020): A Summary Report”; HAQ: Centre for Child Rights & CivicDataLab; Available At: <https://www.haqrc.org/wp-content/uploads/2021/12/unpacking-judicial-data-implementation-of-pocso-act-summary-report.pdf>

<sup>40</sup> A research report titled “*Balancing Children’s Confidentiality and Judicial Accountability: A Cross-Country Comparison Of Best Practices Regarding Children’s Privacy In The Criminal Justice System*” by HAQ: Centre for Child Rights and Macquarie University, Australia suggests that children’s confidentiality and judicial transparency are not mutually exclusive. It is possible for States to maintain anonymity of children through simple name suppression measures which would then enable the release of court documents without endangering the child’s privacy. Best practices from various countries are documented in the report and can be referred to by the Indian courts for the purpose of balancing confidentiality and judicial data transparency. Available At: <https://www.haqrc.org/wp-content/uploads/2020/06/balancing-childrens-confidentiality-and-judicial-accountability.pdf>

<sup>41</sup> 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. (Source: CCL-NLSIU, ‘Implementation of the POCSO Act 2012 by Special Courts: Challenges and Issues Based on CCL-NLSIU’s Studies on the Working of Special Courts in Five States’, 2018. Available at: <https://www.nls.ac.in/ccl/publications/POCSOIMPLEMENT2018.pdf>)

- The 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.<sup>42</sup>
- 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 cases and children.<sup>43</sup>
- Most of the Government's response to sexual offences against children in the recent years has been in terms of increasing the minimum and maximum punishment and introducing death penalty for rape of children below the age of 12 years as a deterrent measure.<sup>44</sup>
- The cases of sexual offences against children suffer from huge pendency and do not follow the legal mandate of completing the trial within one year<sup>45 46</sup> and overlook the directions given by the Supreme Court to expedite such cases for speedy trial.<sup>47 48</sup>
- Increasing pendency in cases of sexual offences against children, multiple charges held by Special Courts and resulting caseload has received attention from the Supreme Court.<sup>49</sup>

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<sup>42</sup> "Sexual Abuse of Children and Child Protection Challenge"; Ali Bharti; India's Children Continue to Challenge Our Conscience: A Status Report on Children; 2019; HAQ: Centre for Child Rights; Url: [indias-children-continue-to-challenge-our-conscience.pdf \(haqcrc.org\)](https://www.haqcrc.org/indias-children-continue-to-challenge-our-conscience.pdf)

<sup>43</sup> Ibid; "Sexual Abuse of Children and Child Protection Challenge"; Ali Bharti

<sup>44</sup> Reference: The Criminal Law Amendment Act 2018 and the POCSO Amendment Act 2019

<sup>45</sup> "High pendency of child sexual abuse cases render POCSO a toothless law: Uttar Pradesh accounts for 25% of all cases under the Act"; Kellogg Sonal; First Post; January 09, 2020; Url: <https://www.firstpost.com/india/high-pendency-of-child-sexual-abuse-cases-render-pocso-a-toothless-law-uttar-pradesh-accounts-for-25-of-all-cases-under-the-act-7883801.html>

<sup>46</sup> POCSO Act requires a trial to be completed within one year of cognizance by court. The study reveals that even as most cases of offences that are of grave nature are disposed within two years, disposal in a sizeable number of such cases spills beyond two years, sometimes even beyond five to six years, leading to travesty of justice. Maximum number of cases where disposal has taken more than five years are from Delhi. (Source: Source: "#Data4Justice - Unpacking Judicial Data to Track Implementation of the POCSO Act in Assam, Delhi & Haryana (2012 to April 2020): A Summary Report"; HAQ: Centre for Child Rights & CivicDataLab; Available At: <https://www.haqcrc.org/wp-content/uploads/2021/12/unpacking-judicial-data-implementation-of-pocso-act-summary-report.pdf>)

<sup>47</sup> *Suo moto* W.P. (CrI) No.-01 of 2019

<sup>48</sup> At the end of 2019, pendency in the three States/UT in the scope of this study stands at 74% in Assam, 88% in Delhi and 60% in Haryana. Creation of new courts is often offered as a solution to deal with such scenarios, although detailed analysis shows that the nature of offence too has a relation to pendency. A significant number of cases that are up for trial are of aggravated penetrative sexual assault, including those of abetment and attempt to commit such an offence, and pendency is highest for these cases. (Source: "#Data4Justice - Unpacking Judicial Data to Track Implementation of the POCSO Act in Assam, Delhi & Haryana (2012 to April 2020)"; HAQ: Centre for Child Rights & CivicDataLab; Available At: <https://www.haqcrc.org/wp-content/uploads/2021/11/unpacking-judicial-data-to-track-implementation-of-the-pocso-act-in-assam-delhi-and-haryana-full-report.pdf>)

<sup>49</sup> Ibid

## ***Recommendations***

- Introduce specific guidelines for protection and support to the victims of child sexual abuse and their families undergoing trial.
- Strengthen the existing child protection mechanisms to minimize the crimes against children at all levels.
- The law on age of sexual consent needs to change and this requires consultation with children and young people as much as experts.
- Victim compensation procedures specifically in cases of child sexual abuse need to be streamlined, simplified and demystified.
- As per NCRB, in almost 94% cases, victims are known to perpetrators. Therefore, the provision of death penalty for child rape must be repealed as it acts as hindrance in reporting of the cases.

## **4) Early and Forced Child Marriage**

### ***Issues and Impacts***

- The National Policy for Children, 2013, does not address the issue of child marriage specifically.<sup>50</sup>
- Ascertaining the exact incidents of child marriage has been a difficult task, but the overall trend indicates a certain rise in number of reported cases being 326 in 2016 to 501 in 2018.<sup>51</sup> This number rose to 785 in 2020.<sup>52</sup> It should be noted that traced over a longer period of time, there has been a decline in cases of child marriage from 2005-06 to 2015-16.<sup>53</sup>
- The incidents of child marriages increased by 49.52% between 2017 to 2020.<sup>54</sup>
- In 2020, 11,051 cases were registered under kidnapping and abduction of minor girls to compel her for marriage.<sup>55</sup>

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<sup>50</sup> The only mention of married children is found in the section on education and development, where the Policy talks about tracking, rescuing and rehabilitating out of school children, including married children and ensuring them access to their right to education. Registration of Marriages is still not compulsory in all states.

[https://wcd.nic.in/sites/default/files/npcenglish08072013\\_0.pdf](https://wcd.nic.in/sites/default/files/npcenglish08072013_0.pdf)

<sup>51</sup> Table 4A.2, Crime in India Report 2018. Available at:

<https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%201.pdf>

<sup>52</sup> Crime in India Report 2020 - National Crime Records Bureau India (Volume I, p.367)

<sup>53</sup> NFHS-III. Available at: <https://bit.ly/3jprmwj>

<sup>54</sup> Crime in India Report 2017 to 2020; National Crime Records Bureau

<sup>55</sup> Crime in India Report 2020 - National Crime Records Bureau India

- A recent report, published by UN in 2019, highlights that 27% of Indian girls were married before the age of 18 as compared to 47% a decade back.<sup>56</sup>
- India is among the five countries which account for approximately half of the child marriages across the globe. The other countries in the list along with India are Bangladesh, Nigeria, Ethiopia and Brazil.<sup>57</sup>
- The Prohibition of Child Marriage (Amendment) Bill, 2021 has been introduced in the Lok Sabha on 20<sup>th</sup> December 2021 which proposes to increase the marriageable age of girls to 21 years.<sup>58 59 60</sup>
- The proposed Amendment Bill faced criticism from many Civil Society Organisations for overlooking and ignoring the ground realities which push girls for early marriages.<sup>61 62 63</sup>
- COVID-19 has increased the risk of rise in child marriages as many families have lost their livelihoods.<sup>64</sup>
- The implementation of the Child Marriage Prohibition Act faces multiple challenges in terms of its implementation in full spirit. The challenges include non-appointment or inadequate number of Child Marriage Prohibition Officers, age-old customary practices, confusion between the personal laws (which allow child marriages as legal and valid marriages) and the

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<sup>56</sup> Zeenat Saberin, *UN: 12 million girls married during childhood annually*. In the very same article, it has been brought to notice by Lakshmi Sundaram, a social activist working towards eradication of child marriage, that implementation of laws are only part of the problem while the major onus for the decrease also needs to be given upon girl empowerment through policies on education, healthcare etcetera. Url: <https://www.aljazeera.com/news/2018/03/12-million-females-married-childhood-annually-180306131428342.html>.

<sup>57</sup> United Nations Children's Fund, *"COVID-19: A Threat to Progress Against Child Marriage"*; UNICEF, New York, 2021.

<sup>58</sup> [https://prsindia.org/files/bills\\_acts/bills\\_parliament/2021/The%20Prohibition%20of%20Child%20Marriage%20\(Amendment\)%20Bill,%202021.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2021/The%20Prohibition%20of%20Child%20Marriage%20(Amendment)%20Bill,%202021.pdf)

<sup>59</sup> The Bill proposes:

- To increase the marriageable age for girls from 18 years to 21 years.
- The provisions of the law will have an overriding effect on contrary provisions provided under personal laws or any other law, including any custom or usage or practice governing the parties. Accordingly, it suggests changes in the Indian Christian Marriage Act, 1872; The Parsi Marriage and Divorce Act, 1936; The Special Marriage Act, 1954; The Hindu Marriage Act, 1955; The Hindu Minority and Guardianship Act, 1956; The Hindu Adoptions and Maintenance Act, 1956; and The Foreign Marriage Act, 1969.
- The time period to annul the marriage available to either party to a child marriage will be increased from 2 years to 5 years.
- The majority of the changes proposed in the Bill will come into force 2 years after receiving the assent of the President.

<sup>60</sup> The Government has received a lot of criticism from the opposition for the hurried introduction of the Bill by mentioning it in the Supplementary list of business without due consultations with states and other stakeholders. In December 2021, the proposed Bill has been sent to the Parliamentary Standing Committee for further discussion.

<sup>61</sup> *"Increasing marriage age for girls may only strengthen patriarchy"*; Flavia Agnes; December 19, 2021; Times of India; <https://timesofindia.indiatimes.com/blogs/toi-edit-page/increasing-marriage-age-for-girls-may-only-strengthen-patriarchy/>

<sup>62</sup> *"Is it right to increase the age of marriage of women to 21?"*; Jagriti Chandra; The Hindu; January 07, 2022; <https://www.thehindu.com/opinion/op-ed/is-it-right-to-increase-the-age-of-marriage-of-women-to-21/article38160297.ece>

<sup>63</sup> *Empowering Women or Curbing Rights?*; Madhu Mehra; Economic & Political Weekly; <https://epw.in/journal/2022/2/comment/empowering-women-or-curbing-rights.html>

<sup>64</sup> <https://www.unicef.org/india/what-we-do/end-child-marriage>

PCMA, lack of coordination and concerted efforts to curb child marriages between different stakeholders etc. etc.

- Legal and policy barriers play a significant role in perpetuating child marriage by denying girls alternatives to marriage and remedies following child marriages.<sup>65</sup>

### ***Recommendations***

- The current legislation on child marriage (PCMA) to remove the discriminatory definition of child for boys and girls to define as child all persons up to 18 years, irrespective of gender.<sup>66</sup>
- Develop adequate guidelines for monitoring and evaluation and such other tools for the Prohibition of Child Marriage Act (PCMA).
- Introduce comprehensive government measures, including measures to provide genuine development opportunities to girl children.

## **5) Child Trafficking**

### ***Issues and Impacts***

- Child trafficking remains a serious concern while protecting the rights of children. Almost all rights of the children who are trafficked are nullified, which shoots up their vulnerability substantially.<sup>67</sup>
- As per National Crime Records Bureau, there is a 3.3% increase of cases of human trafficking under the 'crimes committed against children between 2017 to 2020'.<sup>68</sup>
- In 2020, a total of 4709 victims of trafficking for various reasons were reported, out of which, 47.18% (2222) victims were minor.<sup>69</sup>
- At the end of the previous reporting period in 2020, the GoI announced to expand the number of Anti Human Trafficking Units (AHTUs) from 332 districts to all of India's 732 districts.

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<sup>65</sup> Ending Impunity for Child Marriage in India: Normative and Implementation Gaps"; Policy Brief; Centre for Law & Policy Research, Bangalore and Centre for Reproductive Rights, New York; <https://reproductiverights.org/sites/default/files/documents/Ending-Impunity-for-Child-Marriage-India-WebUpdate-0218.pdf>

<sup>66</sup> The child in the PCMA has differential definitions for boys (up to 21 years and girls 18 years).

<sup>67</sup> News 18, 'Pulled Out of School, Pushed Into Marriage: What the Pandemic is Doing to India's Teenaged Girls', 12 June 2020. Available at: <https://bit.ly/35tSFQT>

<sup>68</sup> Crime in India Report, 2017 to 2020; National Crime Records Bureau

<sup>69</sup> Table 14.2, Crime in India 2020 (Volume III); <https://ncrb.gov.in/sites/default/files/CI2020%20Volume%203.pdf>. While this data remains crucial to understand the developments in child trafficking in the country, the inconsistency in data representation has been regularly pointed out by many social activists. The number of children trafficked shows a decrease when total figures are computed, but if one looks at reporting of trafficking cases by taking into account particular sections of IPC the number seems to be increasing. An example can be that incidences of trafficking cases reported under section 370 and 370A for children sees a jump from 364 in 2017 to 376 in 2020. Therefore, value needs to be placed on getting data consistency when numbers of traffic victims are being reported by different agencies.

However, the government did not report the outcome of this expansion or final number of AHTUs during the current reporting period.<sup>70</sup>

- As per a study<sup>71</sup>, only 27% of the AHTUs are functional and only 51% being notified with all the power and resources.<sup>72</sup>
- India is still classified as Tier-2 country in the Trafficking in Persons Report 2021 released by the Department of State of the Government of the United States of America, highlighting that the Government has not fully met the base line standards necessary to eliminate trafficking. The government did not meet the minimum standards in several areas to curb human trafficking. Overall anti-trafficking efforts, especially against bonded labor, remained inadequate.<sup>73</sup>
- When it comes to prosecution of offenders of trafficking, the government achieved fewer convictions, and the acquittal rate for traffickers remained high at 73 percent.<sup>74</sup>
- In 2020, a total of 1402 persons were chargesheeted for the offence of human trafficking, out of which only 49 were convicted whereas 414 persons were acquitted by Courts.<sup>75</sup>
- Many victims waited years to receive central-government mandated compensation, and often state and district legal offices did not proactively request the compensation or assist victims in filing applications. Some foreign trafficking victims remained in state-run shelters for years due to lengthy or non-existent repatriation processes.<sup>76</sup>

### **Recommendations**

- Create an environment focussed towards preventing trafficking by empowering urban/rural communities.

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<sup>70</sup> 2021 Trafficking in Persons Report: India; <https://www.state.gov/reports/2021-trafficking-in-persons-report/india/>

<sup>71</sup> A study conducted by Sanjog, a technical resource organisation, and Taftteesh, a coalition of lawyers, activists, social workers and survivor leaders, on assessing the operational competence of Anti-Human Trafficking Units (AHTUs) across India. This study collated data between 2010-2019 with the objective of evaluating the effectiveness of the AHTUs to find out the number of AHTUs actually notified by State/UT Governments, the district-wise breakup of these AHTUs and various aspects of how they functioned and trained their officials.

<sup>72</sup> Responses from 16 States and UTs showed that 225 AHTUs are set up only on paper with no centralised process to notify them. Further, the number of notified AHTUs in many states/UTs were much less than the number of AHTUs that states/UTs claimed were operational. Most of the AHTU postings were only seen as 'notional' offices occupied by near-retirees or police officials taking on 'punishment postings'.

The study also found that only seven states/UTs (Bihar, Kerala, Nagaland, Rajasthan, West Bengal, Tamil Nadu and Uttarakhand) have AHTUs covering all their districts. All the other states either have AHTUs in half or less of their districts, with Andhra Pradesh and Chhattisgarh having the lowest coverages of AHTUs with 30% and 25%, respectively. Also, it's alarming that 51% of the states were unresponsive to the questions of establishing AHTUs. (Source: "Only 27% Anti-Human Trafficking Units Functional In India : Study"; Dubey Mohit; August 19, 2020; The News Agency; <https://www.thenewsagency.in/india/only-27-anti-human-trafficking-units-functional-in-india-study>)

<sup>73</sup> 2021 Trafficking in Persons Report: India; <https://www.state.gov/reports/2021-trafficking-in-persons-report/india/>

<sup>74</sup> 2021 Trafficking in Persons Report: India; <https://www.state.gov/reports/2021-trafficking-in-persons-report/india/>

<sup>75</sup> Crime in India Report, 2020; Volume III

<sup>76</sup> 2021 Trafficking in Persons Report: India; <https://www.state.gov/reports/2021-trafficking-in-persons-report/india/>

- Conduct periodical mappings of communities and areas which are vulnerable to trafficking. Increase investments towards spreading creating awareness and providing education to families and children who are at risk of being trafficked.
- The existing Anti Human Trafficking Units need to be strengthened and more such Units need to be created and operationalised.
- Lack of coordination between state police agencies, anti-human trafficking units (AHTUs) and other agencies tasked with child care has to be legislatively and administratively streamlined.
- Post investigation and prosecution, there have to adequate standardization measures for rehabilitation and compensation, including medical treatment, to ensure that all victims are provided proper relief and assistance at state cost for their rehabilitation first within the community and then in the society at large. The victims should also be able to access their right to education, including vocational training, as part of the rehabilitation programme.
- Strengthen the existing provisions for trafficking given in the Indian Penal Code (IPC) instead of bringing new legislation and creating more administrative and bureaucratic bottlenecks.

## 6) JUVENILE JUSTICE

### *Issues and Impacts*

- The enactment of a Juvenile Justice (Care and Protection) Act has led to controversy and discontent amongst experts.<sup>77</sup>
- The new Juvenile Justice system provides for differential treatment of children in 16-18 years' age group denying a whole range of procedural rights and guarantees if such children once transferred to the adult criminal justice system.<sup>78</sup>

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<sup>77</sup> "A year since the new Juvenile Justice Act came into being, chaos rules its implementation"; Bhavya Dore; Scroll; Jan 15, 2017; <https://scroll.in/article/826668/a-year-since-the-new-juvenile-justice-act-came-into-being-chaos-rules-its-implementation>

"When populism takes over: why the Juvenile Justice Act, 2015 is flawed"; <http://pragati.nationalinterest.in/2016/01/when-populism-takes-over-why-the-juvenile-justice-act-2015-is-flawed/>

<sup>78</sup> The current Juvenile Justice (Care and Protection of Children) Act, 2015 not only allows children in the age group of 16-18 years and having allegedly committed heinous offences to be tried as adults on the basis of a preliminary assessment that rests on assumption of guilt, but also allows children in this age group found guilty for committing a heinous offence to be disqualified from employment and denied other such opportunities and right to reform on the basis of their record. Procedurally too, the current law is unclear about the trial of children in the age group of 16-18 years alleged to have committed heinous offences. There is a provision for review of the decision of the Juvenile Justice Board transferring the child to be tried as an adult by a Court of Sessions designated as a Children's Court. However, even after review if the Children's Court decides to treat such child as a child, it cannot send the matter back to the Board, but is required instead to function like a Board and conduct an inquiry like a Board, without the requisite infrastructure and human resources that are otherwise mandated for a Juvenile Justice Board.

- Although the new law now covers a wide range of issues, it includes a regressive provision of waiver of 16-18 year olds into the adult criminal justice system for having committed heinous offences, and is based on a controversial “mental and physical” assessment clause. This has led to the lowering of standards for dealing with children in conflict with the law.<sup>79</sup> Moreover, in heavily militarized zones like Jammu & Kashmir, often children are detained under the Public Safety Act,<sup>80</sup> which is in clear violation of the Juvenile Justice Act, the UNCRC<sup>81</sup> and The Beijing Rules.<sup>82</sup>
- In 2012, the Jammu and Kashmir State Assembly amended PSA to prohibit the detention of people under 18 years of age. However, during the 2016 unrest, there were multiple cases of children under 18 years being detained under PSA.<sup>83</sup>
- Absence of a clear system for determination of age of children who come in contact with the law further renders them vulnerable. Most litigation under the Juvenile Justice law has been around age determination and there is ambiguity in interpretation of statute that allows many children in conflict with the law ending up in jails (prisons) for adults, or many child victims of crimes being deprived of protection guarantees enshrined in various beneficial legislations.
- During the COVID-19 pandemic, the concern regarding trafficking of children re-emerged as information and advertisements about children available for adoption made their way into all social media networks.<sup>84 85</sup>

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<sup>79</sup> In the absence of proper tools of assessment, training and infrastructure, children are already being subjected to arbitrary treatment.

<sup>80</sup> “A Lawless Law: Detention under the Jammu & Kashmir Public Safety Act”; A Report by Amnesty International  
In 2012, the Jammu and Kashmir State Assembly amended Public Safety Act (PSA) to prohibit the detention of people under 18 years of age. However, during the 2016 unrest, there were multiple cases of children under 18 years being detained under PSA. (Source: OHCHR Report on the Situation of Human Rights in Kashmir; <https://www.ohchr.org/sites/default/files/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>)

<sup>81</sup> According to the Article 40 (1) of the UNCRC “States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.”

<sup>82</sup> The UN Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) adopted by the UN General Assembly in November 1985, stipulate in particular that proceedings for children should be conducive to the best interests of the child.

<sup>83</sup> Office of the United Nations High Commissioner for Human Rights: Report on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan

<sup>84</sup> “Child trafficking suspected behind pleas for adoption of Covid ‘orphans’”; Rohit K Singh & Oliver Frederik; May 13, 2021; Hindustan Times; <https://www.hindustantimes.com/india-news/child-trafficking-suspected-behind-pleas-for-adoption-of-covid-orphans-101620898370713.html>

<sup>85</sup> “Beware of traffickers: Social media posts seeking adoption for ‘Covid orphans’ raise concern”; Bismee Taskin, May 15, 2021; The Print; <https://theprint.in/india/beware-of-traffickers-social-media-posts-seeking-adoption-for-covid-orphans-raise-concern/658695/>



- The Government of India amended the Juvenile Justice Act of 2015 in 2021<sup>86</sup> whereby adoptions have been allowed to be finalised by the District Magistrate, who is the district administrator and a non-judicial officer, thus removing the role of judiciary in finalisation of adoption completely. In the name of expediting adoption, necessary checks and balances are being removed. The Hindu Adoptions and Maintenance Act also allows for adoptions without checks and balances.
- India also continuously violates Art 21 b of the UNCRC by allowing inter-country adoptions, despite the fact that suitable manner of care is available in the country.
- The umbrella scheme called “The Integrated Child Protection Scheme”, the single scheme responsible for the administration of Juvenile Justice System, has been heavily under-resourced over the years. The inadequate budget allocation towards the scheme has resulted in poor and tardy implementation of the Juvenile Justice Act.<sup>87 88</sup>
- With over 3.7 lakh children staying in over 9500 child care institutions in India,<sup>89</sup> Alternative care for children in India is an ignored and unaddressed area of children protection.<sup>90</sup>
- Aftercare, while mandated in law, is hardly implemented and care leavers are often left unemployed, homeless and unsupported. There is no scheme that the government of India has made for care leavers in India.

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<sup>86</sup> “Rajya Sabha clears bill to give more power to DMs”; Neetu Chandra Sharma; July 29, 2021; Hindustan Times; <https://www.hindustantimes.com/india-news/rajya-sabha-clears-bill-to-give-more-power-to-dms-101627499703279.html>

<sup>87</sup> The concern of inadequacy of financial resources towards children has also been resonated by the concluding observations made by the UNCRC on 13 June 2014, based on India’s report presented to the Committee on 3 June 2014 in Geneva. The Committee noted “The budgetary allocations do not adequately take into consideration child protection needs. There is also mis-management of allocated resources, a problem which is exacerbated by a high level of corruption and the lack of effective monitoring and evaluation systems”. (full document available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=843&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=843&Lang=en))

<sup>88</sup> The erstwhile Integrated Child Protection Scheme (ICPS) was merged under Child Protection Services and Child Welfare Services in the Union Budget 2021-22 with a reduction in allocation from INR 1500 Crore in the Union Budget 2020-21 to INR 900 Crore in the Union Budget 2021-22. Subsequently, Child Protection and Child Welfare Services were merged under Mission Vatsalya. If the progress in terms of financial allocation for child protection is to be measured for the period that has witnessed the COVID pandemic, there is a clear reduction in the budget as Mission Vatsalya receives a total allocation of INR 1472.17 Crore in the Union Budget 2022-23 compared to what ICPS alone received in 2020-21. (Source: “Pushed & Juggled Beyond Margins: Budget for Children 2022-23”; HAQ: Centre for Child Rights; <https://www.haqcrc.org/wp-content/uploads/2022/02/haq-BfC-2022-23-Analysis.pdf>)

<sup>89</sup> MWCD, 2018, Jena Committee Report; <https://wcd.nic.in/sites/default/files/CIF%20Report%201.pdf>

<sup>90</sup> Children in CCIs lack development of their agency and are seen as an extension of adults. The functioning of the CCIs are regulated but not uniform in terms of ensuring the best interest of the child, and means of child participation is often missing. Nurturing, exposure, life skills and attainment of education is often neglected for all such children. (Source: [https://www.udayanicare.org/upload/Reports/2019-20/Full%20report\\_%20Beyond%2018.pdf](https://www.udayanicare.org/upload/Reports/2019-20/Full%20report_%20Beyond%2018.pdf))

- The legal aid for children in conflict with law is poor, ineffective and not uniform at all places.<sup>91</sup>

### ***Recommendations***

- Establish the executing state mechanisms necessary and provide adequate resources and infrastructure to implement the Juvenile Justice (Care & Protection of Children) Act, 2015.<sup>92</sup>
- The current Juvenile Justice Act must be reviewed and brought in line with the principles of the Constitution of India, UNCRC and General Comment No. 23 issued by the UN Committee on the Rights of the Child.
- Segregated data must be maintained at Central level with regard to children deprived of liberty due to various issues.
- Bring measures to create and maintain centralised data on the number of careleavers in the country and also ensure that they are supported through various welfare programmes and schemes.
- Develop National Policy on Alternative Care of Children and specific guidelines for Community based care mechanisms for children in need of care and protection.

## **7) CORPORAL PUNISHMENT**

### ***Issues and Impacts***

- The amended juvenile justice law contains a provision exclusively on corporal punishment,<sup>93</sup> though it is limited to child care institutions housing children in need of care and protection and children in conflict with the law under the Juvenile Justice Act.
- Moreover, corporal punishment remains culturally acceptable in most settings. Injuries and even death due to corporal punishment has been reported.<sup>94</sup>

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<sup>91</sup> DCPCR Orders Inquiry Into Effectiveness of Legal Aid of Children in Conflict With Law; The Wire; January 05, 2022; <https://thewire.in/rights/dcpcr-legal-aid-inquiry-panel-children-conflict-law>

<sup>92</sup> (CRC/C/15/Add.115/para 79, 80 and CRC/C/15/Add.228/para 79, 80 (d))

<sup>93</sup> Although the focus is on institutions, the provision covers all settings and for the first time allows corporal punishment to be recognised as a crime against children. Section 2 (24)- “ corporal punishment” means the subjecting of a child by any person to physical punishment that involves the deliberate infliction of pain as retribution for an offence, or for the purpose of disciplining or reforming the child and 82. (1) Any person in-charge of or employed in a child care institution, who subjects a child to corporal punishment with the aim of disciplining the child, shall be liable, on the first conviction, to a fine of ten thousand rupees and for every subsequent offence, shall be liable for imprisonment which may extend to three months or fine or with both.

<sup>94</sup> Example:<http://www.newindianexpress.com/nation/Assam-school-student-dies-after-teacher-beats-himup/2016/06/19/article3489210.ece> ; <http://www.ndtv.com/bangalore-news/class-2-girl-beaten-by-leather-belt->

- India reaffirmed its commitment to prohibit corporal punishment in all settings during the second cycle of UPR in 2012<sup>95</sup> and in the third cycle of UPR as well.<sup>96</sup>
- Boys are marginally more likely to face physical abuse (73 per cent) than girls (65 percent). Corporal punishment in both government as well as private schools is deeply ingrained as a tool to discipline children and as a normal action. But most children do not report or confide in anyone and suffer silently.<sup>97</sup>
- The ban on corporal punishment in schools is included in the Right to Free and Compulsory Education Act of 2009<sup>98</sup> and also banned under some State laws.
- The National Commission for Protection of Child Rights has issued guidelines to ban Corporal Punishment in Schools, but the monitoring and implementation of these guidelines remains poor.<sup>99 100</sup>

### ***Recommendations***

- Introduce strict and clear guidelines to all concerned stakeholders to deal with corporal punishment in all settings.

## **8) RIGHT TO EDUCATION**

### ***Issues and Impacts***

- The Government of India has introduced the New Education Policy, 2020 which envisions the public spending on education to be 6% of the Country's GDP. But, on the other hand, the overall expenditure on education has been close to 4% of India's Gross Domestic Product (GDP).<sup>101</sup> Moreover, , the share of child education in the overall Union Budget 2022-23 has witnessed only a marginal increase of 0.3 percentage points (from 1.74% in 2021-22 to 1.77% in 2022-23).<sup>102</sup>

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[allegedly-fornot-doing-homework-1440039](http://www.india.com/news/india/west-bengal-boy-dies-after-being-assaulted-by-teacher932185/) ; <http://www.india.com/news/india/west-bengal-boy-dies-after-being-assaulted-by-teacher932185/>

<sup>95</sup> July 2012, A/HRC/21/10, Report of the Working Group, para 138 (104)

<sup>96</sup> Recommendation No. 161.233, 161.234 [By Liechtenstein] and 161.235 [Zambia] and all these three recommendations were "ACCEPTED" by India.

<sup>97</sup> <http://unicef.in/Story/197/All-You-Want-to-Know-About-Corporal-Punishment>

<sup>98</sup> The Right of Children to Free and Compulsory Education (RTE) Act, 2009, prohibits physical punishment and mental harassment under Section 17(1) and makes it a punishable offence under Section 17(2).

<sup>99</sup> Guidelines for Eliminating Corporal Punishment in Schools; National Commission for Protection of Child Rights; <http://ncpcr.gov.in/showfile.php?lid=153>

<sup>100</sup> Problem of Corporal Punishment Persists in Schools; <https://thewire.in/education/problem-of-corporal-punishment-persists-in-schools>

<sup>101</sup> Economic Survey of India, 2021-22;

<sup>102</sup> "Pushed & Juggled Beyond Margins: Budget for Children 2022-23; HAQ: Centre for Child Rights; <https://www.haqcrc.org/wp-content/uploads/2022/02/haq-BfC-2022-23-Analysis.pdf>

- One of the centrally sponsored flagship scheme aimed towards providing holistic education and to bridge the gender gap in education system, Samagra Shiksha Abhiyan, has been facing financial resource crunch since its launch in 2018-19.<sup>103</sup>
- The New Education Policy, which was introduced amidst the COVID-19, promotes privatisation into education sector which may result in deprivation of quality educational opportunities for children belonging to marginalised sections.<sup>104 105 106 107 108</sup>
- In the wake of COVID-19, the Govt. Of India announced expansion of 'One class, One TV channel' program from 12 to 200 TV channels so as to enable all states to provide supplementary education in regional languages for classes 1 to 12.<sup>109</sup> A recent report based on a survey of children and parents from 1400 households suggests that “only 1% of rural children and 8% of urban children in the sample acknowledged TV programmes as a regular or even occasional mode of study.”46% children in urban areas and 43% in rural areas find online classes/videos difficult to follow.<sup>110 111</sup>

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Approved Budget for SMSA by the Cabinet Committee on Economic Affairs (In Rs. Crore)			
Year	Approved Budget	Allocated Budget	Shortfall
2018-19	34000	30892	3108
2019-20	41000	36322	4678
2020-21	45934	38751	7183

Source: Budgetary Analysis Of Samagra Shiksha Abhiyan; CBGA; <https://www.cbgaindia.org/wp-content/uploads/2020/09/Budgetary-Analysis-of-Samagra-Shiksha-Abhiyan.pdf>

<sup>104</sup> “NEP will promote privatisation in edu: Hemant”; Dhritiman Ray; September 08, 2020; The Times of India; <https://timesofindia.indiatimes.com/city/ranchi/nep-will-promote-privatisation-in-edu-hemant/articleshow/77985606.cms>

<sup>105</sup> “NEP 2020: Path Breaking Policy or the Path to Destruction?”; Surajit Mazumdar; August 02, 2020; News Click; <https://www.newsclick.in/NEP-path-to-destruction>

<sup>106</sup> “De facto Privatisation in Education and Populist Budgets”; Narender Thakur & Vaishali; Vol. 57, Issue No. 9; February 26, 2022; Economic & Political Weekly; <https://epw.in/journal/2022/9/commentary/de-facto-privatisation-education-and-populist.html>

<sup>107</sup> “Accessibility, the Rural-Urban Divide, Privatization, and the New Education Policy 2020”; Bar & Bench; <https://www.barandbench.com/apprentice-lawyer/accessibility-the-rural-urban-divide-privatization-and-the-new-education-policy-2020>

<sup>108</sup> “National Education Policy for the elites”; Prem Singh; October 22, 2020; The Indian Express; <https://indianexpress.com/article/opinion/national-education-policy-for-the-elites-6841211/>

<sup>109</sup> Speech Of Nirmala Sitharaman, Minister Of Finance; Union Budget 2022-23; <https://www.indiabudget.gov.in/>

<sup>110</sup> “Locked Out: Emergency Report on School Education”; The SCHOOL survey took place in August 2021 in 15 states and UTs: Assam, Bihar, Chandigarh, Delhi, Gujarat, Haryana, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Odisha, Punjab, TamilNadu, Uttar Pradesh and West Bengal; <https://counterviewfiles.files.wordpress.com/2021/09/locked-out-emergency-report-on-school-education-6-sept-2021.pdf>

<sup>111</sup> The Department of School Education and Literacy's own sample survey of experience of online education in KVs is self-revealing. Only 33.8% students, 29.6% teachers and 27.2% parents found it joyful, whereas 26.4% students, 15.7% teachers and 25% parents found it difficult. In terms of identifying difficulties in various subjects, mathematics, sciences and social sciences emerged as the subjects of concern. In terms of use of devices, mobiles were being used by the students in highest percentage, i.e., 84 per cent followed by laptops (19.4%), television (5.5%) and radio (0.6%). The Parliamentary Standing Committee has gone ahead to make a note of the fact that almost 70% children in India go to government schools for their education, which lack even the basic infrastructure as compared to KVs and has thus suggested rethinking on the ways to reduce the learning gaps as only online medium will not be able to bridge the existing learning gaps. (Source: Department-Related Parliamentary Standing Committee On Education, Women, Children, Youth And Sports; Three Hundred And Twenty Eighth Report; (Presented to the Rajya Sabha on 6th August, 2021) (Laid on the Table of Lok Sabha on

- It is baffling to observe that the Economic Survey 2021-22 acknowledges the fact that the Ministry of Education does not have any specific data on the adverse impact of prolonged school closures on children and the digital divide created by the pandemic.
- Children of migrating population continue to be deprived of educational opportunities. Needless to say, COVID-19 and the digital divide in learning opportunities have added to the existing challenges.<sup>112 113 114</sup>
- India is one of the countries across the globe to have undergone the longest period of school closures. The Indian education system also saw the largest disruption in history affecting nearly 32 Crore students' population enrolled in various schools/colleges and universities.<sup>115</sup>
- Despite 12 years of enactment of the Right to Education Act, only 13% schools are RTE compliant.<sup>116</sup>

### **Recommendations**

- The right to education is currently only upto the age of 14 years- which is class 8. This does not enable children to be eligible for any further education or entry into any skill based/ vocational training in any recognised institute. Experience is showing that the only way to keep girls in school and prevent child marriage is to ensure they are retained in school longer.

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6 th August, 2021); page 24

[https://rajyasabha.nic.in/rsnew/Committee\\_site/Committee\\_File/ReportFile/16/144/328\\_2021\\_8\\_15.pdf](https://rajyasabha.nic.in/rsnew/Committee_site/Committee_File/ReportFile/16/144/328_2021_8_15.pdf)

<sup>112</sup> "Always on the move: The troubling landscape of the right to education for migrant children in India"; Pooja Pandey; April 19, 2021; The Times of India; <https://timesofindia.indiatimes.com/blogs/voices/always-on-the-move-the-troubling-landscape-of-the-right-to-education-for-migrant-children-in-india/>

<sup>113</sup> The Supreme Court of India, on April 13, 2021 has directed all the states to inform the court about the number and status of migrant children in India and directed the protection of their fundamental rights during the deadly COVID-19 pandemic in India. Unsurprisingly, it took us more than a year into the pandemic to take note of the situation of one of the most marginalized categories of children in India. [Source: The Child Rights Trust And Anr. v. Union Of India And Ors.; WP(C) 737/2020]

<sup>114</sup> "Amid lockdown, digital divide left migrants' kids out in the cold"; Fareeha Iftikhar; January 20, 2022; Hindustan Times; <https://www.hindustantimes.com/india-news/amid-lockdown-digital-divide-left-migrants-kids-out-in-the-cold-101642617984307.html>

<sup>115</sup> Department-Related Parliamentary Standing Committee On Education, Women, Children, Youth And Sports; Three Hundred And Twenty Eighth Report; (Presented to the Rajya Sabha on 6th August, 2021) (Laid on the Table of Lok Sabha on 6 th August, 2021); Page 16

[https://rajyasabha.nic.in/rsnew/Committee\\_site/Committee\\_File/ReportFile/16/144/328\\_2021\\_8\\_15.pdf](https://rajyasabha.nic.in/rsnew/Committee_site/Committee_File/ReportFile/16/144/328_2021_8_15.pdf)

Around 320 million children in India have not stepped into a classroom for more than a year and have lost a tenth of their entire schooling already. There was no clarity as to how long the cessation of classroom activities will continue. With passing time and continued cessation of classes, especially at school level, learning loss was widening and acquiring critical dimensions.

<sup>116</sup> "Only 13 pc Indian schools RTE-compliant: Why this may not reflect education quality"; Geetika Mantri; The Newsmintue; <https://www.thenewsmintue.com/article/only-13-pc-indian-schools-rte-compliant-why-may-not-reflect-education-quality-95181>

- Enhance the resource allocation towards the programmes/schemes related to education for children in the National Budget as well as State Budget.
- Create and maintain centralised data to ascertain the impact of COVID-19 on education of children, especially children belonging to marginalised sections and girls' education.
- Ensure that the children of migrant population are not deprived of quality educational opportunities and therefore, promote the use technology that makes the transfer of such children to a school in destination areas and back in source areas in a doable and easy process.