

INDIA

Civil Society Report on the Implementation of the ICCPR (Contribution to the List of Issues)

To be submitted for adoption of the List of Issues
on the Initial Periodic Report of India at the 126th session of the UN
Human Rights Committee
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I. Introduction

HAQ: Centre for Child Rights is a human rights organisation and has been working towards the recognition, protection and promotion of child rights since last twenty years. Through this submission to the United Nations (UN) Human Rights Committee ahead of its 126th Session for the State Party-India, HAQ is submitting a List of Issues (LoIs) with regard to child rights and the key concerns in the light of the International Covenant on Civil and Political Rights.

II. Contributions to the List of Issues

BIRTH REGISTRATION (ART. 24 of ICCPR)

- Birth registration is an absolute basic right to ensure both ESCR and CPR of children mandatory in Indian law since 1969.¹ India has failed in both timely registration as well as universalization of birth registration.
- As per the National Population Policy 2000, India should have achieved universal birth registration by 2010.² In 2012, the level of registration of births in the country stands at 84.4% and has gone up from 82.0% in 2010.
- The level of performance is disparate across states/ provinces.³
- While some states have shown very good progress,⁴ others remain behind.
- As per Civil Registration System, the level of registration of births has increased to 86.0% in 2016 from 74.5% in 2007.⁵
- Surprisingly, the number of registered births has decreased to 22.2 million in 2016 as compared to 23.1 million in 2015.⁶

¹ The Registration of Births and Death Act, 1969

² National Population Policy; Government of India;

http://populationcommission.nic.in/PublicationDetails/11_984_1.aspx

³ The extent of birth registration varies from the highest of 99 percent in Goa to the lowest of 28 percent in Manipur. (Rapid Survey on Children (RSOC) 2013-14; National Report; UNICEF;

<http://wcd.nic.in/sites/default/files/RSOC%20National%20Report%202013-14%20Final.pdf>)

⁴ In Himachal Pradesh and Bihar, there have been positive instances of birth registration. The State/ UTs which have achieved 100% level of birth registration in 2007 are Arunachal Pradesh, Himachal Pradesh, Kerala, Meghalaya, Mizoram, Nagaland, Punjab, Tamilnadu, Chandigarh, Lakshadweep and Puducherry (Children in India 2012 a statistical appraisal, GoI, Social statistics Division, 2012.

⁵ "Vital Statistics of India Based on the Civil Registration System, 2016; http://www.censusindia.gov.in/2011-Documents/CRS_Report/CRS%20FINAL%20REPORT%202016_21062018.pdf

⁶ http://www.censusindia.gov.in/2011-Documents/CRS_Report/CRS%20FINAL%20REPORT%202016_21062018.pdf

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- In the last Universal Periodic Review Cycle of India in 2017, India received two recommendations regarding improving the birth registration of children belonging to Schedule Tribes and families living in extreme poor conditions.⁷
- Birth registration does not imply getting a birth certificate. An application has to be filed by the parents/guardians of a child to acquire a birth certificate, which most people who cannot read and write find cumbersome.

Key Issues & Challenges⁸

- Low priority accorded to registration and general apathy
- Lack of inter-departmental co-ordination
- Inadequate budget allocation by the States for Civil Registration work
- Low levels of knowledge amongst registration functionaries about the processes and procedures of registration, reporting and management of data
- Lack of regular monitoring and supervision of civil registration work in the states
- Lack of demand
- Lack of awareness about the need and importance of registration
- Low utility of registration certificates and the use of alternate documents for proving the date of birth and claiming benefits
- Weak demand for vital statistics among planners and administrators
- Birth registration does not automatically lead to provision of a birth certificate

JUVENILE JUSTICE (ART. 14/ ART. 24 of ICCPR)

- The enactment of a Juvenile Justice (Care and Protection) Act has led to controversy and discontent amongst experts.⁹
- 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

⁷ Recommendation No. 161.152 : Remove barriers prohibiting scheduled castes and schedule tribes from registering their births and obtaining birth certificates of their children (Noted by GoI)

Recommendation No. 161.150: **Promote and facilitate universal access to birth registration**, especially for people living in extreme poverty, belonging to religious minorities or living in the remote areas of the country through the implementation of mobile units and carrying out awareness-raising campaigns (Accepted by GoI)

⁸<http://unicef.in/Story/1133/Birth-Registration-the-picture-in-India>

⁹ “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/>

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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.¹⁰ Moreover, in heavily militarized zones like Jammu & Kashmir, often children are detained under the Public Safety Act,¹¹ which is in clear violation of the Juvenile Justice Act, the UNCRC¹² and The Beijing Rules.¹³

- 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.¹⁴
- The new Juvenile Justice system provides for differential treatment of children in 16-18 years’ age group, not just allowing them to be tried as adults on the basis of a preliminary assessment that rests on assumption of guilt, but also allowing 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. A whole range of procedural rights and guarantees are thus denied to such children once transferred to the adult criminal justice system.
- 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

¹⁰In the absence of proper tools of assessment, training and infrastructure, children are already being subjected to arbitrary treatment.

¹¹“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. (OHCHR Report on the Situation of Human Rights in Kashmir; <https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>)

¹² 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.”

¹³ 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.

¹⁴ 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

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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.

- 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.¹⁵

CORPORAL PUNISHMENT (ART. 7/ ART. 24 of ICCPR)

- The amended juvenile justice law contains a provision exclusively on corporal punishment,¹⁶ 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.¹⁷
- India reaffirmed its commitment to prohibit corporal punishment in all settings during the second cycle of UPR in 2012¹⁸ and in the third cycle of UPR as well.¹⁹

¹⁵ 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)

¹⁶ 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.

¹⁷ 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-allegedly-fornot-doing-homework-1440039> ; <http://www.india.com/news/india/west-bengal-boy-dies-after-being-assaulted-by-teacher932185/>

¹⁸ July 2012, A/HRC/21/10, Report of the Working Group, para 138 (104)

¹⁹ Recommendation No. 161.233, 161.234 [By Liechtenstein] and 161.235 [Zambia] and all these three recommendations were “ACCEPTED” by India.

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- 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.²⁰
- The ban on corporal punishment in schools is included in the Right to Free and Compulsory Education Act of 2009²¹ 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.^{22,23}

CHILD LABOUR (ART. 8/ ART. 24 of ICCPR)

- While the government has enacted a new child labour legislation, namely The Child and Adolescent Labour (Prohibition and Regulation) Amendment Act, 1986 banning employment of children under the age of 14 years and regulating employment of adolescents aged 14 to 18 years in non-hazardous occupations and processes, it continues to have several legal gaps that in practice allow for children to be economically exploited.
- The new child labour legislation allows children to work in family based enterprises, which are not hazardous in nature and after school hours. In absence of strong monitoring process, this provision gets diluted and a number of children are engaged in household (family based) enterprises even during their school hours. Children under 14 years of age can also be employed in the entertainment and sports industry after school hours or during vacations. However, when read with the Right to Free and Compulsory Education Act, such provisions only cast an additional burden on children to meet the requirements of both school and employment.
- The list of hazardous occupations too has been diluted and restricted to factories, mines and explosives. This is a regression from the past, when 85 occupations and processes had been declared as hazardous under the previous legislation by the Government of India. For example,

²⁰ <http://unicef.in/Story/197/All-You-Want-to-Know-About-Corporal-Punishment>

²¹ 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).

²² Guidelines for Eliminating Corporal Punishment in Schools; National Commission for Protection of Child Rights; <http://ncpcr.gov.in/showfile.php?lid=153>

²³ Problem of Corporal Punishment Persists in Schools; <https://thewire.in/education/problem-of-corporal-punishment-persists-in-schools>

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a Government of India notification dated 10 October 2006 declared employment of children as domestic help and in roadside eateries and restaurants as hazardous. Such employment has been found to be a major factor responsible for trafficking in young children. Yet, the new legislation has failed children by keeping such occupations out of the list of hazardous employment.

- The Government of India still continues with a reservation on Article 32 of the UN Convention on the Rights of the Child.²⁴
- In June 2017, India ratified ILO Convention No. 138²⁵ and ILO Convention no. 182²⁶ in the context of the newly enacted Child Labour legislation.²⁷
- Data on child labour continues to be a challenge. As per Census 2011, the total number of working children in the age group of 5-14 years in 10.1 million.²⁸
- Child Labour in India constitutes 13 per cent of its total workforce. Moreover, the nature of child labour has been evolving over the years and has become invisible as the location of work has changed from factories to homes of business owners²⁹ and other residential premises.
- In India, 60% of working children are engaged in agriculture-related activities. The number of child farmers has come down as an increasing number of children are doing non-farm work. Between 2001 and 2011, the share of children engaged in non-farm work doubled to 40%.³⁰
- 80% of working children are based in rural areas and three out of four of these children work in agriculture as cultivators or in household industries, most of which are home-based employments.³¹
- Under reporting³² and low conviction rates³³ on child labour obfuscates the gravity of the problem.

²⁴ GOI argues “... that it is not practical immediately to prescribe minimum ages 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”

²⁵Convention No 138 stipulates that the minimum age at which children can start work should not be below the age of compulsory schooling and in any case not less than 15 years; with a possible exception for developing countries.

²⁶Convention No. 182 prohibits hazardous work which is likely to jeopardize children’s physical, mental or moral health. It aims at immediate elimination of the worst forms of child labour for children below 18 years.

²⁷<http://pib.nic.in/newsite/PrintRelease.aspx?relid=165604>

²⁸Census of India, 2011

²⁹<http://unicef.in/Whatwedo/21/Child-Labour>

³⁰“Where is Child Labour Most Common in India”; Sriharsha Devulapalli;

<https://www.livemint.com/politics/news/where-is-child-labour-most-common-in-india-1549906952167.html>

³¹ Acharya, Namrata. "New Child Labour Law May Lead to More Child Labour in Farm Sector." www.business-standard.com. Business Standard, 14 May 2015. Web. 3 June 2016.

VIOLENCE AND ABUSE OF CHILDREN (ART. 24 of ICCPR)

- As per National Crime Record Bureau's (NCRB) Crime in India report, a total of 106958 incidences of crimes against children were reported in the year 2016, which is 13.58 per cent increase against previous year. The rate of conviction however was reported to be only 30.7 per cent.³⁴
- According to the Global Slavery Index Report (2016), India leads the world in modern slavery with 18.35 million people trapped as bonded labourers, beggars, human traffickers, child soldiers and sex workers.³⁵
- In the decade of 2005-15, while total crimes against children saw an increase of 529%, or over five times, the incidence of 'child rape' and 'penetrative sexual assault', including 'aggravated penetrative sexual assault', increased by 408%, or more than four times.³⁶
- 37575 incidents of sexual offences against children were reported in the year 2016.³⁷
- Child sexual abuse continues to be rampant in institutional settings.³⁸
- The Government of India had enacted legislation on the Protection of Children from Sexual Offences Act-POCSO, 2012 to address sexual offences against children. The Act along with Rules has come into effect from 14th November, 2012. This is a progressive legislation covering a wide range of sexual offences against children and providing for stringent

³² While according to Census 2011 there are 10.12 million working children (main+ marginal worker) according to in the age group 5 –14 years, the government claims that there are 4.3 million working children in all its public pronouncements and claiming a reduction in the number of working children. This is because the government is not counting the children in marginal work, which they did in 2001.

³³ In the year 2014, only 1027 cases of violations were reported under Child Labour (Prohibition and Regulation) Act, out of which only 792 cases went for prosecution resulting into 754 cases for conviction. (Government of India, Ministry Of Labour and Employment, Lok Sabha, Unstarred Question No.1285, Answered on 01.12.2014, Conviction under Child Labour Laws. <http://164.100.47.132/LssNew/psearch/QResult16.aspx?qref=6668> ; "Dismal conviction rate mars rescue of child labourers", Aditi R.; <https://www.thehindu.com/news/cities/chennai/dismal-conviction-rate-mars-rescue-of-child-labourers/article24315227.ece> ; <https://www.telegraphindia.com/states/north-east/zero-conviction-in-cases/cid/1430094> ; Gurgaon: No conviction in 39 child labour cases in three years (<https://www.hindustantimes.com/gurugram/gurugram-no-conviction-in-39-child-labour-cases-in-three-years/story-Dnd3acq2B2Qg2HuKbuwsFK.html>)

³⁴ National Crime Records Bureau

³⁵ Kelly, Annie. "46 Million People Living as Slaves, Latest Global Index Reveals." www.theguardian.com. Humanity United, 1 June 2016. Web. 3 June 2016.

³⁶ HAQ: Centre for Child Rights & 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.

³⁷ National Crimes Records Bureau

³⁸ Breaking the Silence Child Sexual Abuse in India.2013

[https://www.hrw.org/sites/default/files/reports/india0113ForUpload.pdfpages 47-57](https://www.hrw.org/sites/default/files/reports/india0113ForUpload.pdfpages%2047-57) ; "The horror story inside an Indian children's home" <https://www.bbc.com/news/world-asia-india-45124802>

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punishment to offenders. Eighteen States/UTs have designated Special Courts/Children's Courts to try offences under the Act.

- However, limited investigation, long delays of criminal proceedings, and low conviction rates keep children and their families from accessing effective criminal justice.³⁹ High pendency⁴⁰ of cases often leads to delayed justice to victims.
- Implementation of the POCSO Act is often hindered due to lack of "child-friendly" infrastructures in court⁴¹ and absence of special educators for disabled child victims⁴² and completely fails to address the needs of victims and their families.⁴³
- As more child rape cases enter India's criminal justice system, the courts are clogged with pending cases, delaying justice. Also, while POCSO requires Special Courts to try CSA cases, in practice these courts are overburdened because they take other types of cases too. Long delays increases the likelihood of threats and intimidation against survivors and their families and keeps them from moving forward with their lives.
- Reports from various academic institutions and civil society organisations indicate that the provisions of mandatory reporting, minimum mandatory sentences, increase in age of sexual consent have led to much confusion on the ground and most importantly for children who are victims of sexual crimes.⁴⁴ All data sets indicate that most offenders are known to children.

³⁹ As on 31 July 2015, pendency of POCSO cases before the Special Courts was 86% in Mumbai and 75% in Delhi. Only 28% of all cases completed trial within the stipulated timeframe of one year from the date of cognizance by court. Only 24% of the disposed cases ended in a conviction. Rate of acquittals is fairly high in cases involving a 'known' accused/offender – 66% in Delhi and 50% in Mumbai. (HAQ: Centre for Child Rights & 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.)

⁴⁰ The POCSO Act requires that the case must be concluded within a span of 365 days from the date charge sheet has been filed. The infrastructure of the Indian judicial system does not permit this provision in not being followed adequately and 31% of all cases usually tend to stretch beyond those 365 days. (Mathur, Aneesa. "Hardlook-Working of POSCO Courts in Delhi: What Research Says." IndianExpress.com. Indian Express, 7 Mar. 2016)

⁴¹ The child friendly infrastructures within special courts, which have been mentioned in the POCSO Act, aren't available at most of the district courts. For instance, out of the six courts in Delhi, only three courts have any sort of child friendly infrastructure available. (Raha, Swagata, and Shruthi Ramakrishnan. "Draconian and Ineffective." IndianExpress.com. Centre for Child and the Law, NLSIU, Bangalore, 25 Dec. 2015. Web. 3 June 2016)

⁴² While the POCSO Act has provisioned for availing the special educators for disabled child victims, but the courts do not have any such data of special educators who can be called if required. Therefore, POCSO is far from reach of children with special needs. (Raha, Swagata, and Shruthi Ramakrishnan. "Draconian and Ineffective." IndianExpress.com. Centre for Child and the Law, NLSIU, Bangalore, 25 Dec. 2015. Web. 3 June 2016)

⁴³ The POCSO Act misses the mark when it comes to addressing the protection needs of the victims and their families in the post-trial phase. There have been various incidents, where the victims or their families have faced threats from the side of the accused and this has made it challenging for them to return back to normalcy. (Raha, Swagata, and Shruthi Ramakrishnan. "Draconian and Ineffective." IndianExpress.com. Centre for Child and the Law, NLSIU, Bangalore, 25 Dec. 2015. Web. 3 June 2016)

⁴⁴ CCL-NLSIU's report on the Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues, Available at: <https://www.nls.ac.in/ccl/jjdocuments/posco2012spcourts.pdf>

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Since reporting to police is mandatory, most children do not disclose the crime for fear of police action against the “known” offender or turn hostile during trial, leading to a high rate of acquittals. Another reason for high rate of acquittals comes from the fact that many cases are those of a romantic relationship and consensual sex between adolescents in the 16 to 18 years’ age category, which stands criminalized with the POCSO Act raising the age of consent bar to 18 years.⁴⁵⁴⁶

- Much response to sexual crimes 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. Contrary to the objectives of such measures, when the offenders are known to children, many from their own family, or a person with whom they are in a romantic relationship, such provisions make disclosure even more difficult. As mentioned earlier, they also lead to an increase the rate of children turning hostile in courts and hence acquittals. Introduction of stringent minimum mandatory sentences take away the discretion from the courts to apply their judicial mind and decide on a proportionate sentence taking into account the aggravating and mitigating circumstances.⁴⁷ Besides, analysis shows that when a victim is bordering on the 18 year age cap, courts are inclined to declare them adults in order to avoid the stringent minimum mandatory sentences.⁴⁸

CHILD MARRIAGE (ART.23/ ART. 24 of ICCPR)

- The current law on child marriage⁴⁹ continues to be confusing leaving the courts to give disparate interpretations of the law, which often violates the rights of children. Although there has been some improvement, child marriage still continues in many parts of the country. Trafficking of girls for marriage, especially to states with low sex ratio remains a matter of concern.⁵⁰

⁴⁵ CCL-NLSIU’s Studies on the Working of Special Courts under the POCSO Act

Maharashtra, Available at: <https://www.nls.ac.in/ccl/jjdocuments/POSCOMaharashtrastudy.pdf>

Delhi, Available at: <https://www.nls.ac.in/ccl/jjdocuments/specialcourtPOSCOAct2012.pdf>

Assam, Available at: <https://www.nls.ac.in/ccl/jjdocuments/studyspecialcourtassamPOSCOAct2012.pdf>

Karnataka, Available at: <https://www.nls.ac.in/ccl/jjdocuments/posco2012karnataka.pdf>

Andhra Pradesh, Available at: <https://www.nls.ac.in/ccl/POSCOAP2017study.pdf>

⁴⁶ Bharti Ali, Maharukh Adenwalla, Sangeeta Puneekar, “Implementation of the POCSO Act: Goals, Gaps and Challenges, Study of cases of Special Courts in Delhi & Mumbai (2012 - 2015)”, HAQ: Centre for Child Rights and Forum against Child Sexual exploitation (FACSE), November 2017. Available at: <http://haqcr.org/publication/implementation-pocso-act/>

⁴⁷ Ibid, and CCL-NLSIU Supra Note 45.

⁴⁸ HAQ: Centre for Child Rights, Towards Improving access to Justice and Restorative Care for Child Victims of Sexual Abuse in Delhi: A Report of State Level Multi-Stakeholder Dialogue. February 2019. Available at: <http://haqcr.org/wp-content/uploads/2019/03/report-of-multi-stakeholder-dialogue-on-improving-access-to-justice-and-restorative-care-for-victims-of-child-sexual-abuse.pdf>

⁴⁹ The Prohibition of Child Marriage Act 2006

⁵⁰ Deccan Herald. Bride trafficking must stop now. 27 February, 2019. Available at:

<https://www.deccanherald.com/opinion/second-edit/bride-trafficking-must-stop-720547.html>

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- According to the 2016 report by India Spend, 80% of children who are illiterate and married before 10 happen to be girls.⁵¹
- The data from the National Crime Records Bureau signifies a growing trend in the number of child marriages in India as also slight improvement in reporting. While there were 222 cases of child marriages reported in the year 2013, there were 327 cases of child marriage reported in 2016.⁵²
- Census 2011 data shows an alarming 30.2% of all married women, or 103 million girls, were married before they had turned 18.⁵³
- Over 50 percent of girls marry below the age of 18, the minimum legal age of marriage, resulting in a typical reproductive pattern of "too early, too frequent, too many". Around 33 percent births occur at intervals of less than 24 months, which also results in high IMR.⁵⁴
- The National Policy for Children, 2013, does not address the issue of child marriage specifically. 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.⁵⁵

CHILD TRAFFICKING (ART. 8/ ART. 24 of ICCPR)

- Inclusion of Section 370 in the Indian Penal Code (IPC) has expanded the definition of human trafficking in keeping with the Palermo Protocol, whilst amendment to the Immoral Traffic (Prevention Act), 1956 was pending for long. This IPC provision provides for higher punishment for trafficking in children.
- The Juvenile Justice (Care and Protection of Children) Act 2015 prohibits sale and procurement of all children up to the age of 18 year for any purpose, making it a cognizable and non-bailable offence.

⁵¹ Saha, Devanik. "84% Of 12 Million Married Children Under 10 Are Hindus." Global Investigative Journalism Network, 1 June 2016. Web. 13 June 2016.

⁵² National Crimes Records Bureau

⁵³ Sagnik Chowdhury, "30% women married under age 18", Indian Express, May 31, 2016, New Delhi <http://indianexpress.com/article/explained/child-marriage-women-india-census-data-2011-2826398/>

⁵⁴ National Population Policy; Government of India; http://populationcommission.nic.in/PublicationDetails/11_984_1.aspx

⁵⁵ National Policy for Children, 2013

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- Central Government has evolved protocols and advisories to prevent trafficking in women for commercial sexual exploitation and labour purposes. Unfortunately, despite child labour being one of the largest reasons for child trafficking, the recently amended law on this issue does not mention trafficking.
- The statistics of the Ministry of Women and Child Development state that 19,223 women and children were trafficked in 2016 against 15,448 in 2015, with the highest number of victims being recorded in the eastern state of West Bengal.⁵⁶
- Based on a report published by the Govt of India, there are approximately 10 million sex workers in India out of which 1,00,000 belong to Mumbai alone which is Asia's largest sex industry center. 300,000 to 500,00 under 18 years of age children are involved in the sex trade.⁵⁷
- The National Commission for Protection of Child Rights (NCPCR) reported that the states of Manipur, Assam, Meghalaya and Nagaland and Arunachal Pradesh were the "source" states in the North East from where children as young as five year olds were trafficked in the name of free education.⁵⁸
- Women and children from India are trafficked across 18 countries with new purposes for their being trafficked added every day.⁵⁹
- The problem of human trafficking, including child trafficking, is multidimensional and requires coordination between several ministries.⁶⁰
- The Indian Ministry of Home Affairs (MHA)⁶¹ has set up anti-human trafficking units (AHTU) across districts,⁶² which are under resourced.

⁵⁶ "Govt. Report suggests, Almost 20,000 Women & Children Trafficked in India in 2016" ;

<http://www.fiinnovation.co.in/news/govt-report-suggests-almost-20000-women-children-trafficked-india-2016/>

⁵⁷ <http://www.fiinnovation.co.in/news/govt-report-suggests-almost-20000-women-children-trafficked-india-2016/>

⁵⁸ "CHILD TRAFFICKING IN THE INDO-MYANMAR REGION: A CASE STUDY IN MANIPUR"; Shri S. Saratkumar Sharma, Chairperson MANIPUR COMMISSION FOR PROTECTION OF CHILD RIGHTS Ref. No. 54/1/2016/MCPCR, dated 12/02/2016; https://wcd.nic.in/sites/default/files/RESEARCH%20PROJECT%20REPORT_0.pdf

⁵⁹ Child Trafficking in India. HAQ: Centre for Child Rights and CACT. 2016

⁶⁰ The Government is presently formulating a new 2016 national anti-trafficking law, which could replace even present positive provisions of the Indian Penal Code and existing Immoral Trafficking Prevention Act

⁶¹ The MHA is the nodal agency for the implementation of the ITPA 1956 and other human trafficking initiatives, through its Anti-Trafficking Cell. The Ministry of Women and Child Development (MWCD) continues to be the nodal ministry for tackling this crime with respect to children and is also responsible for inter-ministerial coordination The United Nation Office of Drugs and Crime (UNODC) Regional Office for South Asia (ROSA) has been involved in initiatives to address human trafficking in collaboration with the Government of India, particularly the MWCD and the MHA Since the child victims of trafficking are children in need of care and protection under JJ Act, their responsibility vests with the Child Welfare Committee (CWC) set up under the

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- The Government of India does not fully meet the minimum standards for elimination of trafficking, though it is making efforts to do so.⁶³ Unfortunately, here too most efforts are directed at making new laws than ensuring implementation of the existing one and investing in preventive measures.
- Overall victim protection remained inadequate and inconsistent, and the government sometimes penalized victims through arrests for crimes committed as a result of being subjected to human trafficking. The government's conviction rate and the number of investigations, prosecutions, and convictions was disproportionately low, relative to the scale of trafficking in India, particularly with respect to bonded and forced labour. Despite reports of some officials complicit in trafficking, the government did not report investigating such allegations.⁶⁴

CHILDREN IN CONFLICT AREAS (ART.24 of ICCPR)

- Children continue to be killed and injured in the context of operations of national security forces against armed groups. According to Government data, 188 civilians were killed in Naxalite-affected regions, although no disaggregated data on children were available.⁶⁵
- Children continue to be affected by incidents of violence between armed groups and the Government, particularly in Chhattisgarh, Jharkhand and Jammu and Kashmir.
- Naxalites reportedly resorted to the use of a lottery system to conscript children in Jharkhand. In addition, three incidents of the recruitment and use of children were

juvenile justice system and also the mechanisms laid down in the Integrated Child Protection Scheme (ICPS). Both of these are the responsibility of the central MWCD and the departments in charge of women and children in the states. In addition, the National Commission for Protection of Child Rights (NCPCR) has undertaken some initiatives to address child trafficking. Each year questions are asked in Parliament on issues concerning trafficking. District task forces are there for tracking trafficking but these mechanisms should devolve up to the village/subdistrict levels by engaging Local Self Governance units respectively.

⁶² The Ministry of Home Affairs has established 234 Anti-Trafficking Units in various districts. (PTI; "Over 14000 girls rescued from human trafficking in last 2 years"; April 29, 2016; <http://indiatoday.intoday.in/story/over-14000-girls-rescued-from-human-trafficking-in-last-2-yrs/1/655482.html>)

⁶³ "United States report urges India to increase prosecution for human trafficking"; <https://scroll.in/latest/884594/united-states-report-urges-india-to-increase-prosecution-for-human-trafficking>

⁶⁴ 2018 Trafficking in Person Report: India Narrative; <https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282672.htm#>

⁶⁵ United Nations Secretary General's Report on Children in Armed Conflict

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reported in Jammu and Kashmir in the context of clashes with national security forces.⁶⁶

- Left wing armed groups in Jharkhand have killed children, usually those suspected of being police informers, and admit that children as young as ten are recruited into their ranks.⁶⁷
- Government condemnation of the forced recruitment and use of children in hostilities by left wing armed groups is not matched with clear and effective protection policies. Although the police and other authorities, including the courts, acknowledge that armed groups are abducting or recruiting children, the state government of Jharkhand has failed to take substantive action to end these practices. In fact, the state is yet to conduct a comprehensive exercise to determine the scale of the problem and has no reliable information on the number of children in the ranks of left wing armed groups.⁶⁸

⁶⁶ United Nations Secretary General's Report on Children in Armed Conflict

⁶⁷ The Lost Childhood; HAQ: Centre for Child Rights; <http://haqcrc.org/wp-content/uploads/2016/04/lost-childhood-caught-in-armed-violence-in-jharkhand.pdf>

⁶⁸ The Lost Childhood; HAQ: Centre for Child Rights; <http://haqcrc.org/wp-content/uploads/2016/04/lost-childhood-caught-in-armed-violence-in-jharkhand.pdf>