

Children

SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES

During the second Universal Periodic Review in May 2012 at the UN Human Rights Council, India received 21 recommendations regarding child labour, sexual violence against children, corporal punishment, child trafficking, child marriage and right to education. The Council recommended that India establish meaningful improvements for the mentioned concerns.

India is home to the world's largest number of children with nearly 36.68% of its estimated 1.27 billion population under the age of 18. After accepting several recommendations during UPR 2 on the welfare of children and its 2011 pledge, the status and condition of children in India have not seen any meaningful improvement. Since UPR 2, GOI has adopted a new National Policy for Children 2013; enacted new laws on child sexual abuse, child labour and juvenile justice and a National Plan of Action for Children (NPAC). The NPAC 2016 lists 10 laws, 13 policies and 28 schemes and programmes for children. But still there remain significant gaps between the political, legal commitments and the outcomes for children and their lives. Moreover, in the prevailing economic scenario in India and in particular trends such as globalisation, liberalisation and the gender, caste and religious attitudes adversely add to children's vulnerability and affect any action that may be taken for them.

CHALLENGES

ISSUES AND IMPACTS

Birth Registration	Despite the Registration of Births and Deaths Act, 1969, India has failed to universalise birth registration. Although, in 2012, the level of birth registrations reached 84.4% (rising from 82.0% in 2010) the level of performance is disparate across states/ provinces with some states showing very good progress, while others remain behind.
Falling Sex Ratio	The child sex ratio (0-6 years) has decreased although the overall sex ratio of the country has increased. India has one of the highest sex selective abortions (foeticide) incidents in the world. Moreover, while low sex ratio in the 0-6 years draws attention from GOI and civil society, the low adolescent sex ratio receives none (it is 915 girls to 1000 boys in the 7-14 years; 881 in the 15-18 years). Where are all the girls disappearing?
Child Labour	India enacted the Child Labour (Prohibition and Regulation) Amendment Act, 2016, that prohibits child labour up to the age of 14 years and in hazardous labour for 'adolescents' between the ages of 15-19. However, by introducing provision that allows children to work in family enterprises, and reducing the number of prohibited occupations for children in 15-18 years, it continues to endanger children. The Government has not withdrawn its reservation on Article 32 of the UN Convention on the Rights of the Child.
Sexual Violence and Crimes Against Children	India enacted legislation on the Protection of Children from Sexual Offences (POSCO) Act, 2012 to address all forms of sexual offences against children, irrespective of gender, in November 2012. Eighteen States/ UTs have designated Special Children's Courts to try offences against children. There is a significant rise of 5.3% in all crimes against children in 2015 as compared to 2014 India. There has been a 67.5% increase in reported sexual crimes against children. This rise in all crimes, especially those related to sexual offences between 2014 to 2015 may be attributed in part to increased reporting. However, high pendency of cases; lack of "child-friendly" infrastructures; absence of special educators for disabled child victims and lack of clarity in the law regarding compensation for male victims, impact the children's right to justice.
Child Trafficking	There were 4 recommendations made on trafficking, 3 of which were generally on trafficking and one specifically on child trafficking. The inclusion of Section 370 in the Indian Penal Code has expanded the definition of human trafficking- which is also applicable to children. The amendments to the Immoral Traffic (Prevention Act), 1956, is still pending. The Juvenile Justice (Care and Protection of Children) Act 2015, prohibits sale and procurement of all children up to the age of 18. The Indian Ministry of Home Affairs (MHA) has set up anti-human trafficking units (AHTU) across districts. Most of the AHTUs, however, remain non-functional due to lack of adequate funding and lack of dedicated and trained staffs.
Child Marriage	The current law on child marriage continues to be confusing, leaving the courts to give differing interpretations of the law, which often violates the rights of children. According to the 2016 report by India Spend, 80% of children, the majority of whom were girls were illiterate and were married before 10 years of age. The data from the National Crime Records Bureau recorded a significant rise from 60 in 2010 to 293 cases in 2015- and these are only reported and recorded cases. Most child marriages remain unreported. Census 2011 data showed that 30.2% of all married women were married before they had turned 18.
Juvenile Justice	With the inclusion of waiver to the adult system for 16-18 year olds who have committed serious offences in the amended Juvenile Justice (Care and Protection) Act 2016, the standards have now been lowered. Moreover, in conflict areas, like Jammu & Kashmir, or Naxalite affected areas such as Jharkhand and Chhattisgarh, children are detained under the Public Safety Act, which violates the Juvenile Justice Act, the UNCRC and The Beijing Rules. The only flagship umbrella scheme related to administer Juvenile Justice, Integrated Child Protection Scheme (ICPS), has been heavily under-resourced over the years.
Child Health	There is very little information on children's health across ages as the government's data on children's health is restricted to under the age of 6. Adolescent health concerns need proper data and intervention, beyond reproductive and sexual health concerns and is under resourced. Over the years, access to health care decreasing, especially in the wake of increasing privatisation.

CHALLENGES

Children in Mining Areas

The Government has no systematic data on the number of children who are living near, or are engaged in mining activities. Although, the current child labour law prohibits such children's activities, the Mines and Minerals (Development and Regulation) Amendment Act 2016, allows children of 16 to be apprentices and trainees, which results in negative health and education status.

Children Affected and Infected with HIV/AIDS

HIV affected children below 15 account for 6.54% of the total HIV affected population. The Prevention of Parent to Child Transmission of HIV/AIDS programme is offering services to only 18% of children suffering from HIV.

Commissions for Protection of Child Rights (N)CPCR and SCPCRs

The NCPDR is under the Ministry of Women and Child Development (MWCD) in the centre and SCPCRs are under corresponding departments in the states. This is against the Paris Principles, and severely hampers the Indian independent human rights institution's autonomy. Moreover, the appointment of the commissioners and advisors at the centre and the states remains arbitrary, highly political and violates the Paris Principles.

Child Budgeting

It is significant that Govt of India is one of the few countries in the world that has adopted children's budgeting and has a separate expenditure statement for children at the national level. But children's budgeting needs to be adopted throughout the country. The share of children in the 2015-16 and 2016-17 has been less than 4% of the National Budget, which is inadequate.

ISSUES AND IMPACTS

RECOMMENDATIONS

Strengthen the existing mechanism to ensure that 100% of birth registrations take place in India

Establish the executing state mechanisms and provide adequate resources and infrastructure to implement the Juvenile Justice – Care & Protection of Children Act 2015

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 1087 issued by the UN Committee on the Rights of the Child.

Address the gaps in the new child labour law; update data collection mechanisms on child labour; update the list of “Hazardous occupations and processes” on regular intervals and based on the evolving global market trends and lift reservation on Article 32 UNCRC.

Introduce specific guidelines for protection and support for the victims and their families; strengthen the existing child protection mechanisms to minimise the crimes against children; improve victim compensation procedures.

Take measures to ensure coordination between state police agencies, anti-human trafficking units (AHTUs) and other agencies tasked with child care. The work of AHTU's must be legislatively and administratively streamlined and post investigation and prosecution, compensation and rehabilitation (including medical, treatment, education, vocational training etc.) should be ensured.

Implement the law on Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994 and enhance budgetary allocation for all the schemes / Programmes related to girl child survival.

Establish appropriate child protection mechanisms in all the mining areas with a special focus on comprehensive needs of children affected in such areas.

The Ministry of Health and Family Welfare or Ministry of Women and Child Development must give special attention towards treatment of children affected by HIV/AIDS.

Amend the current legislation on child marriage to remove the discriminatory definition of child for boys and girls to define as child all persons up to 18 years, irrespective of gender and make child marriage illegal.

Develop adequate guidelines for monitoring and evaluation and such other tools for the Prohibition of Child Marriage Act (PCMA).

The National Commission for Protection of Child Rights (NCPDR) must be restructured to become an independent entity. The NCPDR must be given the same status as the National Human Rights Commission (NHRC).

Ensure that the states / provinces introduce a separate budget statement for children to recognise children's budgeting across the country. Following the adoption of General Comment 19 (GC 19) of the CRC, Government of India should examine its budget allocations and expenditure and bring in standards that use GC 19 as a guideline.

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