

NATIONAL CONSULTATION ON CHILD RIGHTS

28TH APRIL - 1ST MAY 2018
SAMBHAAVNAA INSTITUTE, PALAMPUR

HRLN

HUMAN RIGHTS LAW NETWORK

अन्ताक्षरी



CCRI

HAQ

Centre
for

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Abbreviations

ASHA	Accredited Social Health Activist
AWC	Anganwadi Centres
BDO	Block Development Officer
BLCPC	Block Level Committee for Protection of Children
CARA	Central Adoption Resource Authority
CCL	Child in Conflict with Law
CDPO	Child Development Project Officer
CNCP	Child in need of care and protection
CRC	Convention On The Rights Of The Child
CWC	Child Welfare Committee
DARA	District Adoption Resource Authority
DCPC	District Committee for Protection of Children
DCPU	District Child Protection Unit
DLSA	District Legal Services Authority
ICDS	Integrated Child Development Scheme
ICPS	Integrated Child Protection Scheme
JJ Act	Juvenile Justice (Care And Protection Of Children) Act, 2015
JJB	Juvenile Justice Board
JJC	Juvenile Justice Committees of High Courts
MDMS	Mid Day Meal Scheme
NALSA	National Legal Services Authority

NCFTE	National Curriculum Framework For Teacher Education
NCPCR	National Commission For Protection Of Child Rights
NFSA	National Food Security Act, 2013
NHRC	National Human Rights Commission
NPAG	National Physical Activity Guidelines.
NPC	National Policy For Children
PITA	Immoral Traffic Prevention Act
POCSO	Protection Of Children From Sexual Offences Act, 2012
PwD	Persons With Disabilities
RTE Act	Right of Children to Free and Compulsory Education Act, 2009
SABLA Scheme	Rajiv Gandhi Scheme for the Empowerment of Adolescent girls
SARA	State Adoption Resource Authority
SC/ST	Scheduled Caste/Scheduled Tribes
SCPCR	State Commission For Protection Of Child Rights
SHRC	State Human Rights Commission
SJPU	Special Juvenile Police Unit
SLSA	State Legal Services Authority
SNP	Supplementary Nutrition Food
UDHR	Universal Declaration on Human Rights
UNCRC	United Nation Committee On The Rights Of The Child
VLCPC	Village Level Committee for Protection of Children

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Executive Summary

The National Consultation on Child Rights 2018 conducted from 28th April - 1st May 2018 at Sambhaavnaa Institute, Palampur (Himachal Pradesh) was organised by HAQ: Centre for Child Rights, Leher and Centre for Constitutional Rights India/HRLN.

The last decade has seen a furore of laws coming into force as regards children that has in a way been a step back from the progress that was made in the preceding decade. The meeting was aimed at bringing together activists and advocates who have been working in the field of child rights to discuss and mull over the conflicts and challenges while litigating and while doing advocacy and chalk out strategies for the future plan of action at the national level. The sessions were planned and designed by the facilitators in such a manner that enabled maximum participation and interaction. The first day of the meeting began with a round of introductions from the consultation conveners and participants who are stakeholders working in varied capacities from different parts of India, where they spoke about their work and what were their expectations from the Consultation. Over the next few days the various aspects of where the law was failing children were discussed. Various achievements in litigating for child rights were also discussed. The meeting wrapped up on the fourth day where in the final session everyone was asked to jot down what area they would like to work on and in how much time. This helped the conveners to promulgate the Plan of Action.

The Facilitators



Kranti L C, Executive Director, Human Rights Law Network

“A lot of instances pertaining to violation of basic rights of children get lost or do not come out in the dominant narrative.”

Enakshi Ganguly, Co-founder, HAQ: Centre for Child Rights

“As a human rights activist I have seen a plethora of rights getting explored - transgenders rights, women rights etc, but Child Rights come at the end... that has to be addressed.”



Bharti Ali, Co-Founder, HAQ: Centre for Child Rights

“There is a need to really have more discussions about child rights & to develop a common understanding of human rights.”



**Govind Beniwal, Project Director,
Antakshari**

“When we go to work with the government we see that our idea of child rights does not match theirs, and when it comes to spending on children, they look at it as an expenditure and not an investment”



**Nicole Menezes, Co-
Founder, Leher**

“The system has to reach and build in itself a community for children”

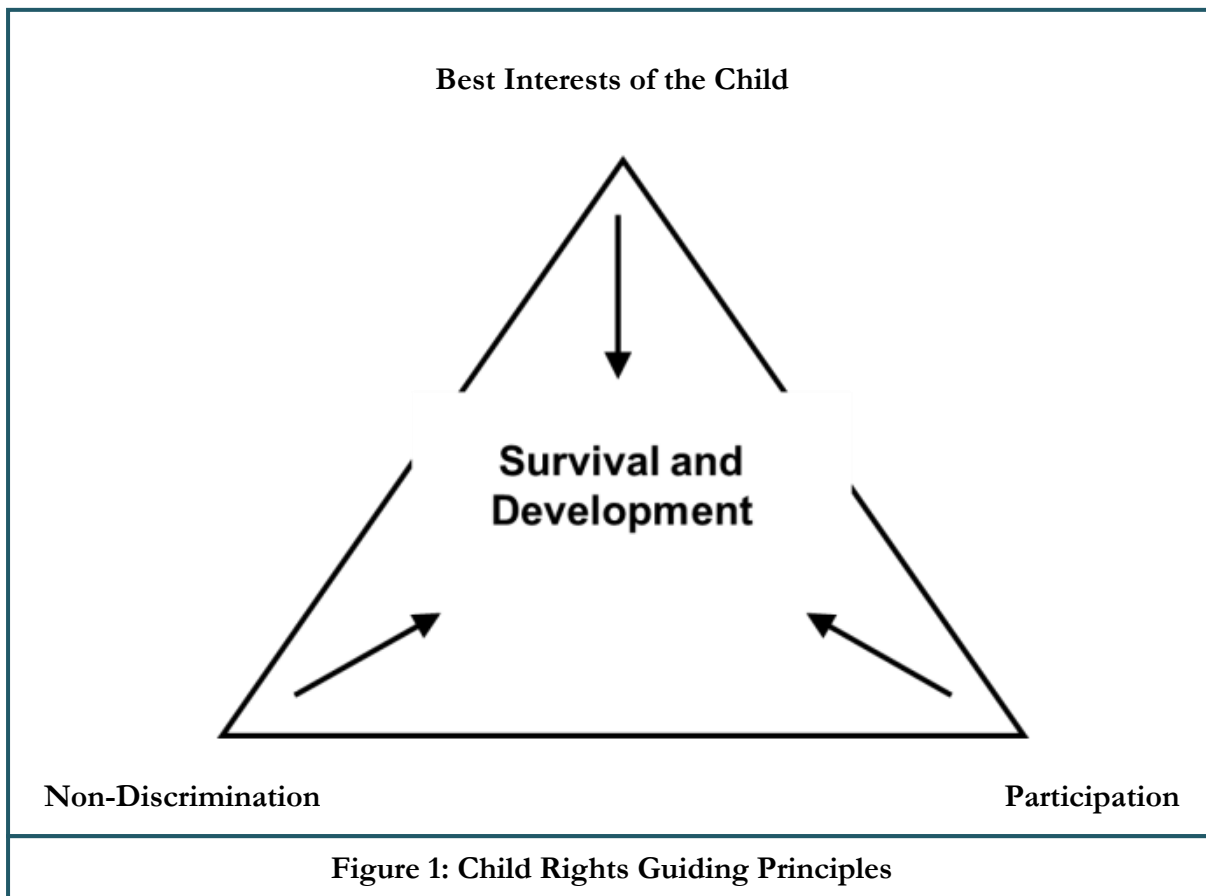
Anant Asthana, Advocate

“Question- if we don't refer rights of children as Human rights and rather refer it as Children rights, would it make any difference?”



Objectives of the meeting

The conveners of the consultation came together and planned this meeting to come to a **Common understanding on Child rights** as it is seen that there is a disconnect in the litigation and the work that was taking place as regards activism in the child rights field. Apart from that the litigation that has been done is only confined to protection, other areas of right to food, nutrition, education etc needs to be focused upon. Despite the work happening around development of child rights, at the ground level the protection is not reaching the children. The main aim of the consultation was to create a cadre of lawyers and activists from various states to mentor them and to further guide them to take forward litigation in the various areas of child rights holistically.



Day 1

Introductions



The first day began with a round of introductions from the consultation conveners and participants who are stakeholders working in varied capacities from different parts of India, where they spoke in short about their work and what were their expectations from the Consultation.

Screening of Film aimed on identification of Child Rights Violations followed by open session & experience-sharing by participants

A short video clip “**Victims of Garbage dump**” was shown to all the participants. Four groups were formed and were each asked to present on what the Human rights violations are noticed in the video clip and what are the remedies available to the children in the situation shown in the video clip.



The groups deliberated and presented the various violations of rights children would possibly face in their day to day life. They then further explained the remedies children in such



situations had and the forums they could approach. The group presentations laid the foundation for the consultation in the sense of what are really the rights children should enjoy and the understanding of the participants of child rights.

CHILD Rights

The next session by Bharti Ali covered the basics of “Child Rights”; the discussion began with the pertinent question “*What is a Right?*” Some needs are so basic that can’t be compromised with, hence they are called rights. *What do Children want?* The minimum-needs of the child that can’t be compromised are rights. Rights become entitlement only when it attains force of law and it can’t differentiate between children. Children’s matters are not different from human rights. The fight starts at this level, but it will take time to reach there, progressively and strategically reach there.

Evolution of Child Rights and India’s International Obligations¹



History of child rights shows that 1920s onwards, children’s issues started receiving systematic attention across the world.

In India, the seeds were laid with the social reform movement in the 19th century during the colonial rule.

The Brahma Sabha founded in 1828 by Raja Ram Mohan Roy was the first of its kind to raise a voice against sati and child marriage. As a result, the then Governor General Lord

William Bentinck by a legislation in 1829 abolished *Sati*. The Brahma Samaj also worked equally hard for the less privileged ones by setting up orphanages.

The Prarthana Samaj came into existence in 1867, under the guidance of Keshab Chandra Sen, whose efforts led to abolishing early marriage of girls and polygamy and recognition of widow remarriage and inter-caste marriage through the passing of the Government Act III.

Social reformers like Raja Ram Mohun Roy, Ishwar Chandra Vidyasagar, Dayanand Saraswati, etc. have thus played a crucial role in drawing attention to issues such as child marriage, widow remarriage, infanticide, abolition of Sati, devadasi tradition, dowry, women’s property rights, the purdah system and education of girls.

Alongside, issues such as vagrancy, truancy, begging, orphan and destitute children, street and working children, children in jails, also started receiving attention from the colonial masters, since they affected law and order and general administration.

¹ Annexure 1. Presentation prepared by HAQ: Centre for Child Rights

The worst forms of the exploitation of children started during the Industrial Revolution. Just as the case was in Great Britain, new industrialists started hiring children who were forced to work in inhuman conditions. Laws against child labour were passed under various Factories Acts 1881 onwards, and laws relating to mines, ports, plantations, motor transport works, shipping, shops and establishments etc. Most laws against child labour were formulated in the 19th and early 20th century.

Issues of guardianship and custody received attention in 1890 with the passing of the first ever Guardianship and Wards Act, followed by laws governing succession, marriage, divorce, maintenance and custody among Hindus and other religious communities that came into existence between 1925 and 1956.

Of the first set of laws relating specifically to children/minors are the Indian Majority Act of 1875, the various Children's Acts in different provinces of Madras, Bombay, North Western Provinces and Bengal that were enacted between 1920 and 1924, the Sarda Act, 1929 (later came to be known as the Child Marriage Restraint Act, the Children (Pledging of Labour) Act, 1933, and the Employment of Children Act, 1938.

The Constitution of India specifically provides for taking special measures for women and children (Article 15). Subsequently, several progressive laws have been enacted such as the law on juvenile justice, prohibition of use of technology for sex-selective abortions, right to education, sexual offences against children etc. and many old laws have been amended from time to time or repealed to provide better protection to children and their rights.

The first legislation having a bearing on juvenile justice came in 1850 with the Apprentices Act which required that children between the ages of 10-18 convicted in courts to be provided vocational training as part of their rehabilitation process. This act was transplanted by the Reformatory Schools Act, 1897, the Indian Jail Committee and later the Children Act of 1960. This gave way to the **Reformatory Schools Act, 1897**. The Madras Children Act 1920 was the first Children Act to



be enacted, closely followed by Bengal and Bombay in 1922 and 1924, respectively. Later, many more states enacted their own Children Acts, covering within their sphere two categories of children, viz., (i) delinquent children, and (ii) destitute and neglected children. The Government of India enacted the Children Act 1960, to apply only to the Union Territories and serve as a model to be followed by the states in the enactment of their respective Children Acts. All of these gave protection to children and included measures for reformation.

In 1986, India introduced its first Juvenile Justice law (Juvenile Justice Act 1986), providing measures for protection, rehabilitation and reformation of juveniles who broke the law and for those who were neglected and in need of care.

In 2000, the Government of India enacted the **Juvenile Justice (Care and Protection of Children) Act, 2000 (JJA 2000)**, which is based on the best interests of children and aims at protection, restoration and reformation of all children or juveniles. While the new 2015 law does continue to adhere to the principle of restoration, it also creates a convoluted systemic approach to children in conflict with law between the ages of 16-18 who are involved in heinous offences.

State of Jammu and Kashmir repealed its existing juvenile law of 1997 and enacted Jammu & Kashmir (Care and Protection of Children) Act 2013. This legislation is very similar to India's national Juvenile law except that it does not contain any provision on adoption.

A Firm National Commitment to address Children's Human Rights is reinforced through:

- The Constitution of India
- A plethora of laws
- National Policy for Children, 1974 and 2013
- National Plans of Action, 1979, 1992, 2005
- Setting up of a Separate Ministry for Women and Child Development in 2006
- Recognition of children's issues in the Five Year Plans since the 3rd Five Year Plan and inclusion of a distinct section on child rights in the Chapter entitled 'Women's Agency and Child Rights' since the 11th Five Year Plan
- Establishment of the National Commission for Protection of Child Rights (NCPCR) in 2007 and State Commissions thereafter
- Defining the child as a person below the age of 18 years in the national policy framework and different laws

Reinforcing Commitment through International Law

- The drafters of Indian Constitution had undertaken a careful comparison of the Constitution of the United States, Ireland and the Universal Declaration on Human Rights (UDHR) and ingrained their principles that had stood the test of time.
- Over the years India has reinforced its commitment to its citizens, including children through ratification of several international human rights instruments.

Table 1: UDHR and parallel provisions in Indian Constitution	
UDHR (Article Number)	Indian Constitution
1. All people are entitled to rights without distinction based on race, color, sex, language, religion, opinion, origin, property, birth or residency.	Art. 14 (equality before the law and equal protection of the laws), as limited by Art. 31C. Art. 16 (1) (equality of public employment), as limited by Art 16(3)-16(5).
2. All Human beings are free and equal in dignity and rights	Art. 15 (on the basis of religion, race, caste, sex, or place of birth), except under Arts. 15(3) and 15(4) (special provisions for women and children, and affirmative action). Art. 15 apply to all state action, and to private action restricting access to public places and facilities. Art. 17 (abolition of untouchability); and Art. 16(2) (employment discrimination on the basis of religion, race, caste, sex, descent, place of birth, and residence), as limited by Art 16(3)-16(5).
3. Right to life, liberty and security of person.	Art. 21 (Right to life with dignity, no extrajudicial executions). Art. 23 (prohibition of traffic in human beings and forced labor); Art. 24 (prohibition of hazardous labor by children under age 14); Art. 17, Abolition of Untouchability
4. Freedom from slavery	Art 17 and Art 23, 24. Specific Act of Parliament exists for abolition of Bonded labour.
5. Freedom from torture	Art 20, 21, 22
6. Right to be treated equally by the law	Art 14
7. Right to equal protection by the law	Art 14, Art 39A
8. Right for all to effective remedy by competent tribunal	Art 14, 20, 21,22
9. Freedom from arbitrary arrest.	Art 22

10. Right to a fair public hearing by independent tribunal	Art 20, 21, 22, 39A
11. Right to presumption of innocence until proven guilty at public trial with all guarantees necessary for defense	Art 20, 21, 22, 39A
12. Right to privacy in home, family and correspondence	Though not specific, Art 21 is invoked
13. Freedom of movement in your own country and the right to leave and return to any countries	Though not covered specifically, Art 21 is invoked. Maneka Gandhi v. UOI is a classical case.
14. Right to political asylum in other countries	N/A
15. Right to nationality	Art. 19(1)(d) as to movement, and (e) as to residence, as limited by Art. 19(5) (reasonable restrictions in the interests of the public or of a "scheduled tribe").
16. Right to marriage and family and to equal rights of men and women during and after Marriage	Covered by separate Acts, specific to cultures and religions.
17. Right to own property	Art 31
18. Freedom of thought and conscience and religion	Art 19, 25, 26, 27, 28
19. Freedom of opinion and expression and to seek, receive and impart information	Art. 25 (freedom of religion and of conscience, "subject to public order, morality and health"), though under Art. 25(2) any level of government may restrict <i>economic</i> activities related to religion. Special mention is made of the religious practices of the Sikh religion. Under Art. 26, all religious orders have limited powers to establish places of worship and teaching, while Art. 28 ensures the separation of religious and state education. In addition, The Right To Information Act 2005

20. Freedom of Association and assembly	Art. 19(1) (b) (freedom of peaceful assembly), as limited by Art. 19(3) (reasonable restrictions to advance national security).
21. Right to take part in and select government	There are numerous provisions, throughout the text of the Constitution, including those relating to election of the President, local village committees (Panchayats), and detailed rules for elections, eligibility for public service, etc.
22. Right to social security and realization of economic, social and cultural rights	Art 29, 30, 43
23. Right to work, to equal pay for equal work and to form and join trade unions	Art 19, 39, 42
24. Right to reasonable hours of work and paid holidays	Art 42, 43
25. Right to adequate living standard for self and family, including food, housing, clothing, medical care and social security	Art 47, and other Provisions of Part IV of Constitution
26. Right to education	Art 45
27. Right to participate in cultural life and to protect intellectual property rights	Art 29, 30
28. Right to social and international order permitting these freedoms to be realized	Art 38
29. Each person has responsibilities to the community and others as essential for a democratic society	Art 48A, Art 51A
30. Repression in the name of rights is unacceptable.	Art 32, 32 A, 33-35, Art 226

Ratification of the CRC

India ratified the UN Convention on the Rights of the Child (CRC) in 1992, thus once again reinforcing its commitment to children's rights.

Optional Protocols to the CRC

- Very often, human rights treaties are followed by "Optional Protocols" which may either provide for procedures with regard to the treaty or address a substantive area related to the treaty. Optional Protocols to human rights treaties are treaties in their own right, and are open to signature, accession or ratification by countries who are party to the main treaty.
- The CRC has three Optional Protocols. These are:
 - Optional Protocol to CRC on Sale of Children, Child Prostitution and Child Pornography, 2000, Signed by India on 15 November 2004 and Ratified on 16 August 2005
 - Optional Protocol to CRC on involvement of Children in Armed Conflict, 2000, Signed by India on 15 November 2004 and Ratified on 30 November 2005
 - On 19 December 2011, the UN General Assembly approved a third Optional Protocol on a communications procedure, which allows individual children to submit complaints regarding specific violations of their rights under the Convention and its first two optional protocols. India is yet to ratify this third optional protocol.

India has made a declaration on Article 32 of the CRC stating that "...economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the extent of available resources..."

Overview of the (CRC)

The UNCRC draws attention to four sets of civil, political, social, economic and cultural rights:

- **Survival** – e.g. right to life; highest attainable standard of health; nutrition; adequate standard of living; right to a name and nationality.
- **Development** – e.g. right to education; early childhood care and development; social security; right to leisure, recreation and cultural activities.
- **Protection** – e.g. freedom from all forms of exploitation, abuse, inhuman or degrading treatment, neglect; special protection in situations of emergency and armed conflicts.
- **Participation** – e.g. respect for the views of the child; freedom of expression; access to age appropriate information; freedom of thought, conscience and religion; right to be heard in administrative and judicial proceedings.

*All Rights are
Interrelated,
Indivisible and
Interdependent*

While child rights may be grouped into four clusters for easier understanding - survival, development, protection and participation, the rights in these clusters cannot totally be separated from each other. They are interrelated and integrated.



For example,

- the right of the child to a name and nationality has direct bearing on the right of the child to access his/her survival and development rights such as health care and education
- when girls do not have toilet facilities in schools, they keep away from school as they are unable to maintain personal hygiene, they do not feel protected and it hampers their overall growth

Clearly, **children encounter their realities not as a fragmented experience but as a whole.** Childhood and the range of children's needs and rights are one whole, and must be addressed holistically. A life-cycle approach must be maintained.

At the same time, it must be remembered that while all children have equal rights, their situations are not uniform.

Civil and Political Rights (Immediate Rights)

They include such things as right to life and liberty, non-discrimination, right to nationality, freedom of expression, right to re-unification with the family, right to justice and a fair hearing in criminal cases, a separate system of juvenile justice for children in conflict with the law and most protection rights.

Economic, Social and Cultural Rights (Progressive Rights)

They include right to a reasonable standard of living, health and education, and the rights which are not covered by the first category.

Convention on the Rights of the Child — General Principles²

The Convention on the Rights of the Child is rooted in some basic values about the treatment of children, their protection and participation in society. These ideas are expressed in some of the early articles in the text. The choice of these articles as “general principles” was made by the UN Committee on the Rights of the Child during its first session in September-October 1991, when it

² Source: International Save the Children Alliance, Getting it Right for Children, A practitioner's guide to child rights programming, 2007

agreed on guidelines on how the initial reports by governments should be written and structured. That was the context for the important decision to give special emphasis to the four general principles - **Non-discrimination, Best interests of the child, Right to Survival and Development and Respect for the views and participation of the child** contained in articles 2, 3, 6 and 12 of the CRC.

These articles were put under a special heading in the guidelines before norms on civil rights, family aspects, health, education and the other more substantive provisions. It was made clear that the committee wanted governments also to report on the application of these principles in relation to the realization of the other articles in the CRC. Thereby the convention became something more than a mere list of obligations; it offered a comprehensive message.

Non-discrimination

The UNCRC focuses on the elimination of discrimination in three main areas: against individual children; against specific groups of children; and against the population group as a whole. Tackling discrimination is not simply about imposing top-down strategies. Instead, programmes should analyse power relationships and discrimination and the impacts these have on the children.

In practice this means that State should promote non-discrimination and diversity awareness. It should also provide appropriate information and training to children, their families and communities, and to governments and partners

State should include non-discrimination/diversity analysis as part of its child rights situation analysis. This would consider:

- which groups of children experience discrimination (make sure data is disaggregated)
- multiple forms of discrimination on the basis of different aspects of social identity; for example, a disabled girl from a minority ethnic group
- an analysis of work that other local, national or international groups are doing to tackle discrimination

State should plan objectives and advocacy goals that reflect the non-discrimination analysis and clearly demonstrate how discrimination will be addressed

State should implement your programme in ways that engage with, empower and impact on children who face discrimination; that build internal and public awareness around issues of discrimination; and that demonstrate to others the value and abilities of vulnerable children, viewing them as social actors.

Monitoring and evaluation: State should use clear indicators to measure a reduction in discrimination and changes in attitude. It should also consider the intended and unintended impacts on different groups and get the views of a range of stakeholders.

Survival and development

While children's survival often relates directly to children's right to life, children's right to development (as described in the UNCRC) must be interpreted in its broadest sense, encompassing the physical, psychological, emotional, social and spiritual development of the child.

The state, as main duty-bearer, has a responsibility to ensure the survival and development of children to the maximum extent possible. Where the state is unable to assume its responsibilities, international donors, NGOs, civil society organisations and the private sector may need to support and complement the state through financial, technical and logistical responses.

In practice this means:

- an awareness and understanding of childhood and children's evolving capacities. You should also provide appropriate information and training to the children you work with, to government, and to partners an analysis of the state's capacity to prioritise children's survival and development, including: financial resources, budget allocation and funding mechanisms; policies and legislation; technical capacity; and organisational capacity. You should also analyse the capacity of other groups (civil society, international organisations, private sector, etc) who contribute to the fulfillment of children's survival and development rights
- to plan programmes based on this analysis, including the perspectives of all relevant stakeholders in the process
- to implement responses that strengthen the state's capacity to fulfill its obligations while also working with a broad range of other partners
- to monitor and evaluate against clear indicators that measure direct changes in children's lives, as well as changes in capacity, policies, legislation and attitudes.

Best interests of the child

This principle touches on every aspect of a child's life. It means, when adults make decisions, they should think about how their decisions will affect children. This particularly applies to budget, policy and law makers. Whenever decisions are taken that affect children's lives, the impact of those decisions must be assessed to ensure that the best interests of children are the main consideration. The interests of others – such as parents, the community and the civil society – should not be the overriding concern, even though they may influence the final decision.

In practice this means:

- State should promote awareness of the best interests principle and its implications for decision-making
- State should analyse how local and national policy, legislation and practice is informed by children's best interests
- Planning: allow children's views to influence programme design
- Implementation: State should facilitate children's direct involvement in the practical implementation of programme activities
- Monitoring and evaluation: State should measure the impact of programme activities on children to assess whether their best interests are being realised. State should also measure the impact of programme activities on policies, practice, attitudes and communities to assess the extent to which children's best interests are being prioritised.

Child participation and the right to be heard

Participation, as enshrined in the UNCRC, is about children and young people having the opportunity to express their views, influence decision making and achieve change in areas that affect their lives. Children's participation is informed and willing involvement of children, including the most marginalised and those of different ages and abilities, in all matters concerning them.



This does not mean that children can now tell their parents what to do. The UNCRC does not interfere with parents' right and responsibility to express their views on matters affecting their children.

Moreover, the Convention recognizes that the level of a child's participation in decisions must be appropriate to the child's level of maturity. Children's ability to form and express their opinions develops with age and most adults will naturally give the views of teenagers greater weight than those of a preschooler, whether in family, legal or administrative decisions.

In practice this means:

- State must be aware of and understand children's evolving capacities and their ability to act on their own behalf. (For example, there are different ways of involving older and younger children depending on their level of understanding and ability to participate.)
- State should analyse the programme environment to identify the barriers to children speaking out or to their voices being heard
- Planning: State should create space and opportunity for children's views to influence programme design
- Implementation: create space and opportunity for children's voices to be heard within their families, communities and beyond; build children's confidence, knowledge of their rights and ability to protect themselves; give children an opportunity to learn and practice important life skills; and empower children as members of civil society and as active and responsible citizens
- Monitoring and evaluation: use clear indicators to measure the extent of children's participation and the creation of spaces and mechanisms for their views to be taken into account in decision-making
- Be accountable to children through feedback.

Recognizing the Agency of Children – A Case Study³

Ameena, a thirteen-year-old Muslim girl, was sold by her parents for a small sum to a Saudi Arabian

³ Source: University of Minnesota, Human Rights Resource Centre, Circle of Rights, Economic, Social and Cultural Rights Activism, A Training Resource, Section 3, Module 5, Children and ESC Rights.

sheikh. She was one of several siblings, many of whom were girls. Her father worked as a weaver; the family was impoverished. The "sale" was disguised as a marriage, although even under Muslim law, Ameena was too young to give her consent to the "nikah." Ameena would not have come to public notice had it not been for a vigilant and sensitive air hostess, Ms. Ahluwalia, who noticed the young distraught child in the aircraft before it flew out of the country. On Ms. Ahluwalia's sounding an alert, the police were informed, the sheikh was arrested, and Ameena was sent to a government protective home for children in New Delhi. The home is located within the complex which houses the notorious Tihar Central Jail in Delhi, and the proximity does not end there. The home functions as a prison despite the status of a "home" under the law.

A police case was registered against the sheikh and Ameena's parents. During the several months the case went on, Ameena lived in the prison-like confines of the protective home. While her parents traveled from distant Andhra Pradesh at devastating cost to attend court hearings, the sheikh sought refuge in the Saudi Arabian embassy in Delhi, and managed to eventually flee the country. Ameena's relationship with her parents naturally was strained and she developed a friendship with Ms. Ahluwalia, who visited her regularly. Ms. Ahluwalia expressed her desire to adopt Ameena, or at least take her into temporary custody till the case was decided, but her requests were refused by the state as well as the courts.

In a case filed by Ms. Ahluwalia and several women's organizations the Delhi High Court directed that Ameena be restored to the custody of her parents and sent home. To prevent her being sold again, the Court issued directives to the state government that Ameena be provided with free education, and that the state monitor her well-being at regular intervals and make some provisions for providing economic security to the family. Ameena went home with her parents, even with the criminal case pending against them.

Ameena was at no stage seen as a person with any agency or capacity to take decisions for herself. Her father gave consent on her behalf to the "nikah," Ms. Ahluwalia activated the police and the legal system, the state placed her in the protective home, the court sent her back to her parents, and eventually her parents prevailed upon her to dilute her testimony against them in the criminal case.

What did Ameena want? We don't really know because she was not asked. While the law and her parents obviously believed her to be old enough to be married and become sexually active, she was not given even a limited amount of control over directing the path of her life. Perhaps all she wanted was not to be separated from her brothers and sisters, and to enjoy the last few years of her childhood in peace.

Lack of recognition of the capacity of children to decide has very negative implications for certain categories of children, such as street children, who become accustomed at an early age to taking their own decisions and to a certain type of freedom. Treating all children as bereft of any agency without reference to their age and situation seems to be a direct assault on their rights as individuals.

Implementing the CRC and the Reporting Process

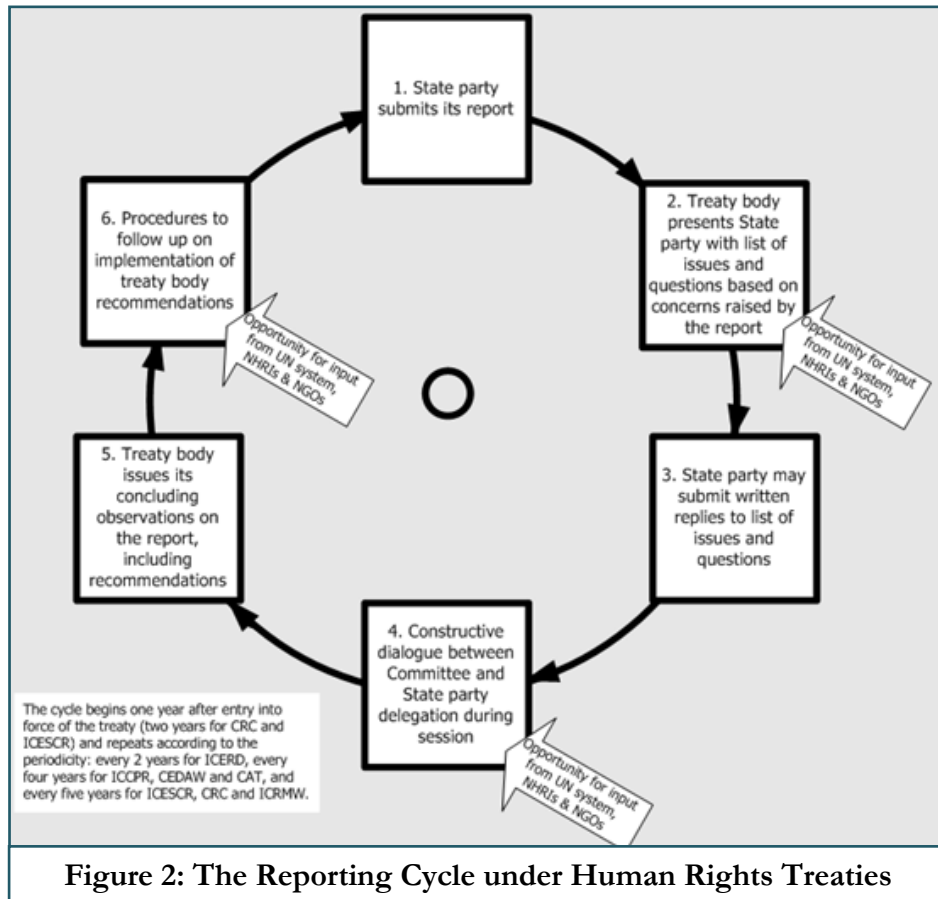
Article 42 - State parties are obliged to make the rights contained in the Convention widely known to both adults and children.

Article 43 – A Committee on the Rights of the Child consisting of 18 elected experts nominated by States Parties to be set up at the UN level to examine progress made by the States Parties on

implementation of the CRC and its Optional Protocols.

Article 44 – States Parties are to send their reports to the CRC Committee on the implementation of CRC in their countries – first one after 2 years of ratifying the CRC and then every 5 years.

Article 45 – Other competent groups (including NGOs & specialized UN and International agencies) to submit information to the committee as alternate or shadow reports.



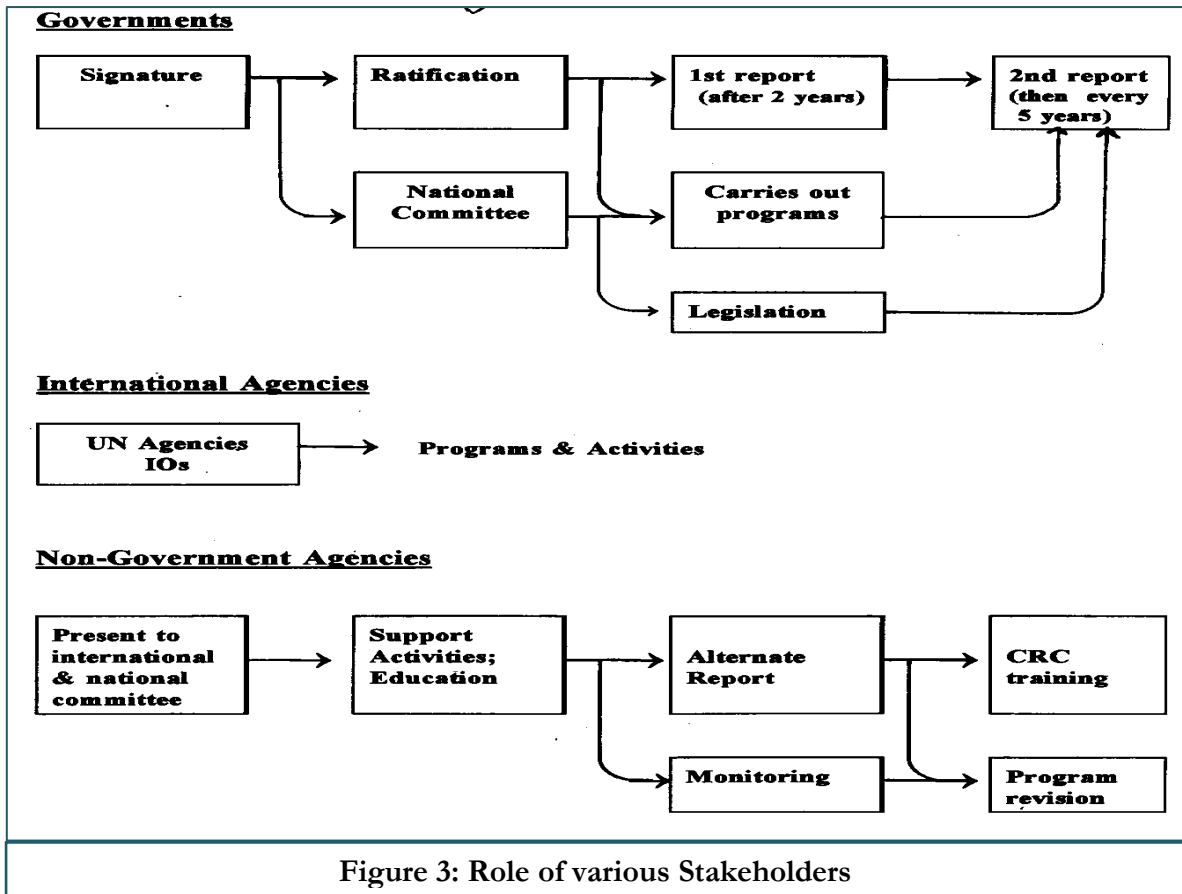


Figure 3: Role of various Stakeholders

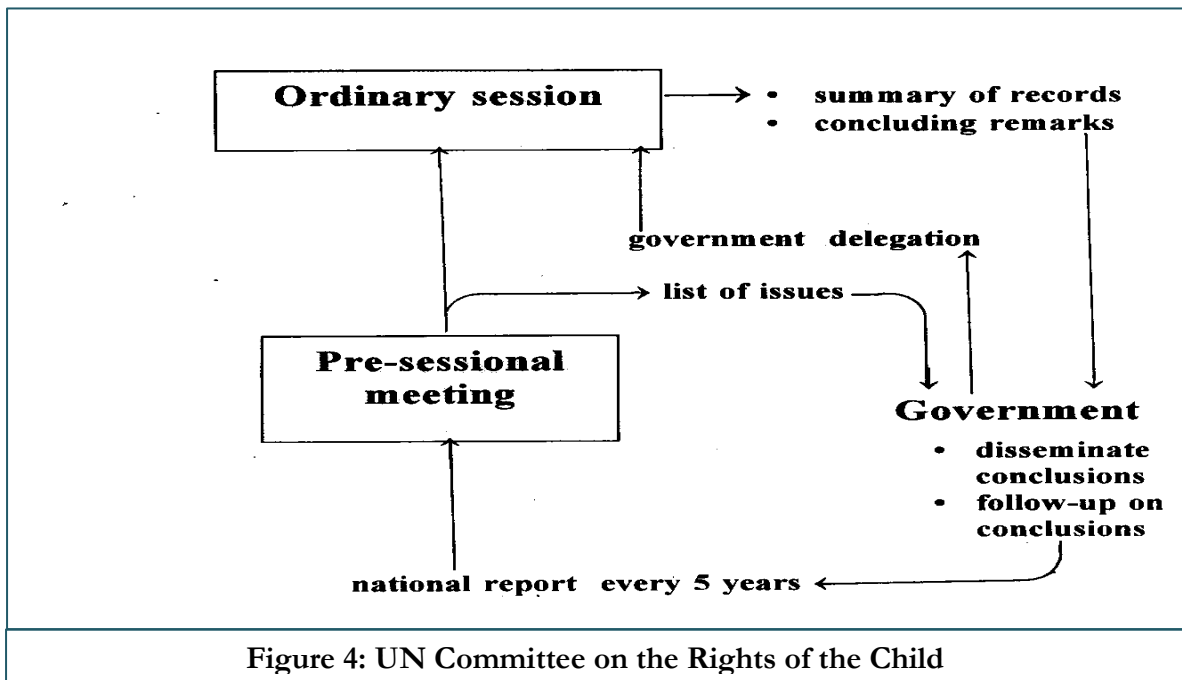


Figure 4: UN Committee on the Rights of the Child

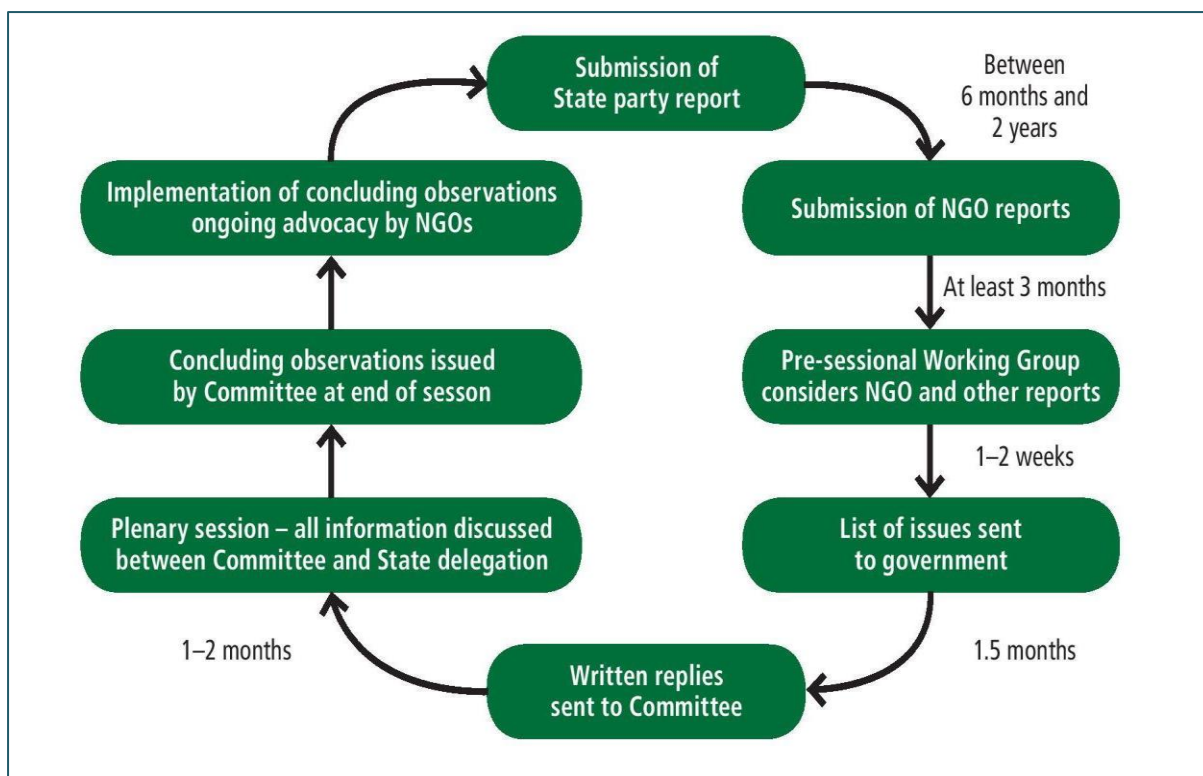


Figure 5: Reporting Process of the Committee on the Rights of the Child by NGOs

Table 2: Report Submission under CRC by Govt. Of India

Reporting by Government of India	Due Date	Date of submission
Initial Report	10 January 1995	19 March 1997
Second Report	10 January 2000	10 December 2001
Third Report	10 January 2005	Government of India missed the due date. As an exceptional measure, a consolidated third and fourth periodic report was due before 28 May 2008. Missing this date, a new date was set out as 10 July 2008. The combined report was submitted only as recently as September 2011.
Fourth Periodic Report	As an exceptional measure India was to submit a consolidated third and fourth report before 28 May 2008.	Government of India later set out to submit the report before 10 July 2008. The combined report was submitted in September 2011.

Table 3 : Report Submission under the Optional Protocols of CRC by Govt. Of India		
Reporting by Government of India	Due Date	Date of submission
Optional Protocol on sale of children, child prostitution and child pornography		
Date of ratification/accession – 16 Aug 2005		
Date of Entry into Force –16 September 2005		
http://www2.ohchr.org/english/bodies/ratification/11_c.htm and http://www.bayefsky.com/html/crc_sc_ratif_table.php		
First Report	The first report was due in September 2007. Government of India had requested for submission of the report along with the combined Third and Fourth Periodic report on CRC in July 2008.	Submitted in September 2011.
Optional Protocol on children in armed conflict		
Date of ratification/accession – 30 November 2005		
Date of Entry into Force – 30 December 2005		
http://www2.ohchr.org/english/bodies/ratification/11_b.htm , and http://www.bayefsky.com/html/crc_ac_ratif_table.php		
First Report	The first report was due in January 2008. Government of India had requested for submission of the report along with the combined Third and Fourth Periodic report on CRC in July 2008.	Submitted in September 2011

India has 48 special & local laws pertaining to children. One of the challenges faced as Human rights advocate is that we are imposing a western concept on the “other party” by asking for an individual entity for children, although India had already been dealing with this earlier with the introduction of Apprentice Act and other post independence developments. India adopted the Child Rights Convention in 1989 and ratified it in 1992. Reporting under the Convention is twofold 'Country report' which the state will do and 'Shadow report' that can be submitted by the civil society. The Child Rights Convention Committee even meets NGO and other civil institutions/organizations. Then a Concluding report is made by the CRC Committee where it assesses State's action as per the reports. Civil Society can send the report under complaint mechanism as well.

What is the Definition of Child Rights in Indian Context?⁴



Govind Beniwal went on to discuss “what is the definition of child rights in Indian context?” How does one determine *Age of discretion*, when one discusses Child rights it is seen mostly from the purview of a victim and when it comes to child accused, we get biased somewhere, why?

As per the CRC age of child is defined as any person under 18 years, but it allows member country to choose different age of majority as per their own domestic laws, but still try to be at parity with the CRC. If we define child below the age of 18 years, can it still be possible to have different age cutoff under different statues? What is the need to change the age of child in the labour laws?

Para 2.3 of National Policy for Children –

“This Policy is to guide and inform all laws, policies, plans and programmes affecting children. All actions and initiatives of the national, state and local government in all sectors must respect and uphold the principles and provisions of this Policy.”

Policy Framework must Guide the Legal Framework

A Uniform age definition of the child in accordance with NPC, 2013 must therefore be brought into all laws relating to children

Child in the existing Legal Framework

- The age of majority giving a citizen the right to vote is 18 years.
- A person below 18 years cannot enter into a legal contract. Therefore, a person below 18 years cannot even sign the ‘vakalatnama’ to fight a court case or put up a defense.
- A driving license can only be acquired on completion of 18 years of age.
- No one below the age of 18 years can donate blood.
- The legal age for marriage is 18 years for girls and 21 years for boys.
- The Juvenile Justice Act, 2015 defines a child as a person up to the age of 18 years. The 2000 Act brought it in consonance with the UNCRC and other international instruments on juvenile justice. But the new Act allows a child between the ages of 16 - 18 who has committed heinous

⁴ Annexure 2. Presentation prepared by HAQ: Centre for Child Rights

offence may be tried as an adult.

- The Protection of Children from Sexual Offences Act, 2012 also defines a child as a person up to the age of 18 years.

But ...

- The Child Labour (Prohibition and Regulation) Act, 1986 defines a child as a person up to the age of 14 years.
- The Right of Children to Free and Compulsory Education is restricted to children in the age of 6-14 years
- The Immoral Traffic (Prevention) Act, 1956, makes a distinction between a child and a minor defining a child as a person below the age of 16 years and a minor as a person between the age of 16 and 18 years.

There is no Uniform Age Definition in the Existing Laws!

Why a Uniform Definition of the Child?

- Lack of a Uniform definition of the child affects planning and programming for children, leaving many of their problems unaddressed
- It leads to, or perpetuates, discrimination between children
- It causes conflict between different existing laws and protections offered by them



Legal Definitions of the Child and Resulting Discrimination and Confusions

- **Some children are allowed to work for economic reasons and some are not.** A 16-year-old domestic worker cannot seek justice under the Child Labour (Prohibition and Regulation) Act because the law defines a child as a person below the age of 14 years. The only situation of child labour that gets covered under the Juvenile Justice legislation which defines child as a person below 18 years is a situation where a child has been procured for employment in hazardous work and kept in bondage and in addition his/her wages have been withheld or used by the procurer for his own purposes.
- **When matters such as custody, maintenance and marriage are governed by personal laws** that define children differently and also treat children differently, rights of some children are bound to get affected while their counterparts covered by a more progressive legislation

enjoy better protections.

- While the **child marriage law** does not declare all child marriages null and void and hence **treats them as valid marriages** until either party to the marriage seeks annulment. On the other hand, **by virtue of the POCSO Act, sexual activity between or with minors amounts to statutory rape** since the question of consent has no meaning when it comes to children below the age of 18 years.

Age of consent vs. Age of Child

- A strong demand from civil society for lowering the age of sexual consent
- Treating age of consent as the age of the child is a common mistake we make
- When a child is defined as a person below the age of 18 years, the state has to ensure his/her protection, including protection from being criminalized for actions that result from immature behaviour. Demand for lowering the age of sexual consent to 16 years is therefore a demand for protecting young people eloping to get married from being criminalized and not a demand that would give effect to any change in the definition of the child.

Child vs. Child Labour

- Similarly, if all children below the age of 18 years are to be ensured their right to protection from exploitation, violence and abuse, the definition of child labour as persons below the age of 14 years takes away those guarantees.
- Therefore there has been a strong demand for keeping the age definition of child labour same as the age definition of the child.



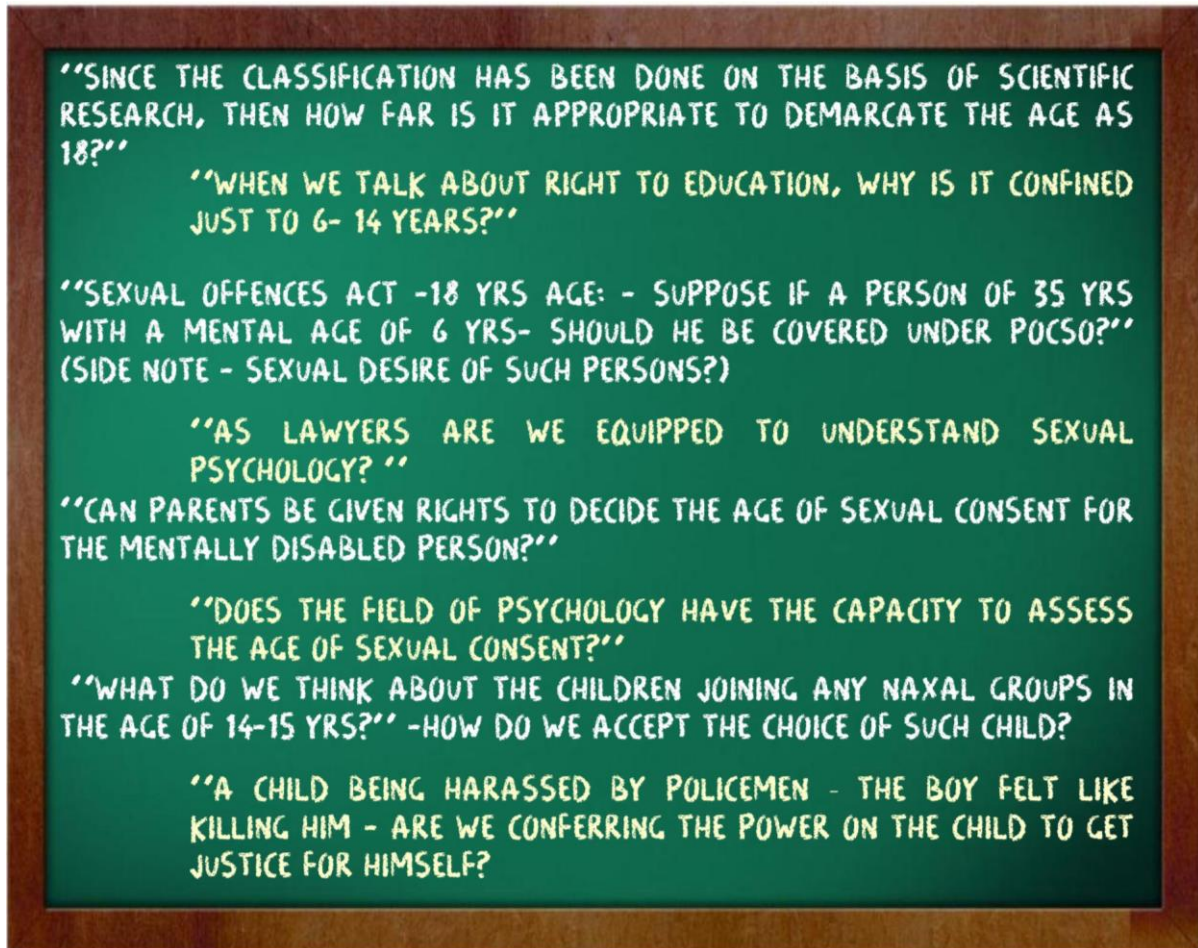
Conclusion:

The vulnerable situations that child find themselves in can be addressed through law even without changing the definition of the child. In doing so the guiding factor should be child protection.

The day ended with the participants having to contemplate how one would agree upon an *age of consent* and whether a child can consent.

Day 2:

The second day picked up from where the conversation was paused on the previous day, the discussion on Age of Consent/Agency. Certain questions were put forth by both resource persons as well as participants as follows:



CONCLUSION - These are not the easy situations, the treatment has to be different because the needs, social background and circumstances are different.

“The criminal system is retributive till now, we should move to broaden our horizon. The law will always prescribe an age, but there will always be situation when there we have to look into legal agency, society, circumstances as exceptions.”

Role of Judiciary and key cases on Childrens’ rights

In the next session Adv. Kranti L C discussed Judicial Trends and child rights where it was pointed out that criticism with Public Interest Litigation is always that the orders were passed but implementation has always been a question. A need to pick up issues pertaining to children apart from POCSO and JJ Act was identified. A lot of instances pertaining to violation of basic rights of children get lost or do not come out in the dominant narrative. The judgments of Supreme

Court in Sampurna Behrua⁵ case in which roving orders as regards rights of children were passed was finally disposed off. The Independent thought case⁶ at the Supreme Court where in cases of rapes of children up to the age of 18 within the confines of marriage will be considered as statutory rape. Basically bringing POCSO into the realm of marriage, be it in any religion.

Bottom-line - It's not just litigation which is required to be done; rather a more holistic approach has to be adopted and we as lawyers have to proceed strategically. Need to work constantly, creatively, and document it for a strategic performance.

Important Acts



In keeping with the spirit of the sessions being interactive, four of the prominent special laws pertaining to children were divided among 5 groups of participants being (JJ Act, POCSO, RTE and Prohibition of Child Labour Act). The groups had to present on issues under the various Acts.

Juvenile Justice (Care and Protection of Children) Act, 2015⁷

The JJ Act was divided into two groups one which would cover the children in conflict with law and the other children in need of care and protection.

The group that covered the aspect of Children in conflict with law went section wise and discussed through experience how despite there being provisions for certain aspects of protection to a child when he comes in the criminal justice system, most of those provisions do not get followed and the child is treated similarly to an adult. The participants gave examples of cases that they have worked on. The presentation was followed by a question and answer session discussing the approach of a lawyer when it comes to heinous offences.

The group that covered the aspect of Children in need of care and protection talked about the role of CWC and when a child is to be considered in need of care and protection. They spoke about the importance of the Integrated Child Protection Scheme (ICPS) which covers all funds for infrastructure and processes under the JJ Act. The role of the DCPO was also expounded upon.



⁵ Sampurna Behrua Vs. UoI, Writ Petition (Civil) No. 473 Of 2005. Annexure 3

⁶ Independent Thought vs. Union Of India, Writ Petition (Civil) No. 382 Of 2013. Annexure 4

⁷ Annexure 5. Summary of judgements under JJ Act by Anant Asthana

Day 3

Protection of Children from Sexual Offences Act, 2012



The group that talked about POCSO noticed that when they read the Act the idea of protection of a child does not come out in the Act; rather it is more about punishment than protection. The Act nowhere defines protection nor does it define person. The Act is the only Act which talks about mandatory reporting which is problematic as it can be abused. There is no provision for the victim to seek remedy when the chargesheet is not filed in time and improper investigation. There is no

sex education for children to know what safe or unsafe touch is. The POCSO is already considered as a draconian law, when one gets death penalty in the picture it makes it more draconian.

Prohibition of Child Marriage Act, 2006

Govind Beniwal took this session and introduced the topic saying that the Act was enacted before independence, and after signing the CRC India passed the Child marriage act as it is today. He discussed the provisions under the Act, the issues and the ground reality of implementation of the Act. All child marriages are not void but they are voidable. He mentioned that there are two instances when the marriage is void ab initio one being when an injunction has been passed under this act⁸, second⁹, when the child has been kidnapped out of lawful guardianship to be married, or deceitfully been taken from any place or if the child has been trafficked after marriage. Child marriage Act applies to all religions. It needs to be treated as a crime, an FIR should be registered. At the village level, the Police may try to protect the villagers, the villagers on a whole may be in favour of the child marriage but one can go to the magistrate for injunction on the marriage.



⁸ **S. 14. Child marriages in contravention of injunction orders to be void.** - Any child marriage solemnised in contravention of an injunction order issued under section 13, whether interim or final, shall be void ab initio.

⁹ **S. 12. Marriage of a minor child to be void in certain circumstances.** - Where a child, being a minor-

- a. is taken or enticed out of the keeping of the lawful guardian; or
- b. by force compelled, or by any deceitful means induced to go from any place; or
- c. is sold for the purpose of marriage; and made to go through a form of marriage or if the minor is married after which the minor is sold or trafficked or used for immoral purposes, such marriage shall be null and void.

Child and Adolescent Labour (Prohibition and Regulation) Act, 1986



The group presenting on Child Labour Act talked about how the government very conveniently in consonance with the Right to Education Act defined the a child and an adolescent separately to be up to 14 years and 14-18 years respectively. Basically the Government simply gave children free education till 14 years and put their hands up and said that they can work beyond the age of 14 in hazardous conditions.

Right of Children to Free and Compulsory Education Act, 2009

The group presenting on the RTE Act talked about how there is provision for free and compulsory education the same is not seen on the ground level. The RTE covers free education for children between the ages of 6-14 years. On the ground level the access is missing, as schools are far from where children who really need the benefit of the RTE Act reside. It is also a fundamental duty¹⁰ of the parent to ensure their child goes to school to avail education. If anyone is aggrieved by the functioning of the RTE Act there is a grievance redressal mechanism¹¹, which is supposed to solve the grievance within three months which in reality doesn't work, as the child will be sitting at home all the while the complaint is being heard. If there is no redressal from the Local authority then one can go to the State Commission for Protection of Child Rights, but then again they also do not necessarily function.



Right to Food¹²

The next session was around Right to food when it comes to children. Adv. Dipika Sahani charted the history of litigation pertaining to right to food and the provisions relevant to children. She talked about how right o food is a fundamental right as it is a basic right to survival. She broke down the understanding of right to survival to include:

- Right to be born;
- Right to minimum standards of food, shelter and clothing;

¹⁰ Art.51A(k) of Constitution of India

¹¹ S. 34 of RTE

¹² Annexure 6. Presentation prepared by Adv. Dipika Sahani.

- Right to live with dignity;
- Right to health care, to safe drinking water, nutritious food, a clean and safe environment, and information to help them stay healthy;
- The Right to Food is a human, legal and clearly defined right which gives obligations of states to reduce both chronic undernourishment and malnutrition.

She went on to cover the provisions under the constitution of India where:

- Article 21 protects for every citizen's right to live with human dignity. Would the very existence of life of those families which are below poverty line not come under danger for want of appropriate schemes and implementation thereof, to provide requisite aid to such families?
- Also article 47 which inter alia provides that the State shall has to raise the level of nutrition and the standard of living of its people and has to regard the improvement of public health as among its primary duties.

Supreme Court has passed extensive orders in the People's Union for Civil Liberties vs. Union of India¹³ (popularly known as the Right to Food case). The case was filed by the Rajasthan Chapter of PUCL pursuant to a severe state of famine in the state of Rajasthan. All the important directions that are applicable to children have been listed below as per dates of such orders:



□ 28.11.2001¹⁴

- MIDDAY MEAL SCHEME : *We direct the State Governments/ Union Territories to implement the Mid-Day Meal Scheme by providing every child in every Government and Government assisted Primary Schools with a prepared mid day meal with a minimum content of 300 calories and 8-12 grams of protein each day of school for a minimum of 200 days. Those Governments providing dry rations instead of cooked meals must within three months start providing cooked meals in all Govt. and Govt. aided Primary Schools in all half the Districts of the State (in order of poverty) and must within a further period of three months extend the provision of cooked meals to the remaining parts of the State.*
- INTEGRATED CHILD DEVELOPMENT SCHEME (ICDS) : *We direct the State Govts./ Union Territories to implement the Integrated Child Development Scheme (ICDS) in full and to ensure that every ICDS disbursing centre in the country shall provide as under:*
 - (a) *Each child up to 6 years of age to get 300 calories and 8-10 grams of protein;*
 - (b) *Each adolescent girl to get 500 calories and 20-25 grams of protein;*
 - (c) *Each pregnant woman and each nursing mother to get 500 calories and 20-25 grams of protein;*
 - (d) *Each malnourished child to get 600 calories and 16-20 grams of protein;*
 - (e) *Have a disbursement centre in every settlement.*

¹³ Writ Petition (Civil) No. 196 of 2001

¹⁴ Annexure 7

❑ **20.04.2004¹⁵**

- ❑ All such States and Union Territories, who have not fully complied with the order dated 28th November, 2001 shall comply with the said directions fully in respect of the entire State/Union Territory, not later than 1st September, 2004.
- ❑ The conversion costs for a cooked meal, under no circumstances, shall be recovered from the children or their parents.
- ❑ In appointment of cooks and helpers, preference shall be given to Dalits, Scheduled Castes and Scheduled Tribes.
- ❑ The Central Government shall make provisions for construction of kitchen sheds and shall also allocate funds to meet with the conversion costs of food-grains into cooked mid-day meals. It shall also periodically monitor the loss take off of the food-grains.
- ❑ Attempts shall be made for better infrastructure, improved facilities (safe drinking water etc.), closer monitoring (regular inspection etc.) and other quality safeguards as also the improvement of the contents of the meal so as to provide nutritious meal to the children of the primary schools.

❑ **07.10.2004¹⁶**

- ❑ The efforts shall be made that all SC/ST hamlets/habitations in the country have Anganwadi Centres as early as possible.
- ❑ The contractors shall not be used for supply of nutrition in Anganwadis and preferably ICDS funds shall be spent by making use of village communities, self-help groups and Mahila Mandals for buying of grains and preparation of meals.
- ❑ All State Governments/Union Territories shall put on their website full data for the ICDS schemes including where AWCS are operational, the number of beneficiaries category-wise, the funds allocated and used and other related matters.
- ❑ All the State Governments/Union Territories shall allocate funds for ICDS on the basis of norm of one rupee per child per day, 100 beneficiaries per AWC and 300 days feeding in a year, i.e., on the same basis on which the Centre make the allocation.
- ❑ BPL shall not be used as an eligibility criterion for ICDS.
- ❑ All sanctioned projects shall be operationalised and provided food as per these norms.
- ❑ All the State Governments/Union Territories shall utilise the entire State and Central allocation under ICDS/PMGY and under no circumstances, the same shall be diverted

¹⁵ Annexure 8

¹⁶ Annexure 9

and preferably also not returned to the Centre and, if returned, a detailed explanation for non- utilisation shall be filed in this Court.

- ❑ All State/Union Territories shall make earnest effort to cover the slums under ICDS.
- ❑ The Central Government and the States/Union Territories shall ensure that all amounts allocated are sanctioned in time so that there is no disruption whatsoever in the feeding of children.

❑ **13.12.2006¹⁷**

- ❑ Government of India shall sanction and operationalize minimum of 14 lakh AWCs before December 2008. In doing so, the Central Government shall identify SC and ST hamlets/habitations for AWCs on a priority basis.
- ❑ Government of India shall ensure that population norms for opening of AWCs must not be revised upward under any circumstances. Further, rural communities and slum dwellers should be entitled to an "Anganwadi on demand" (not later than three months) from the date of demand in cases where a settlement has at least 40 children under six but no anganwadi.
- ❑ The universalisation of the ICDS involves extending all ICDS services (Supplementary nutrition, growth monitoring, nutrition and health education, immunization, referral and pre-school education) to every child under the age of 6, and all adolescent girls.
- ❑ Chief Secretaries of all State Governments/UTs are directed to submit affidavits giving details of the steps that have been taken with regards to the order of this Court of October 7th, 2004 directing that "contractors shall not be used for supply of nutrition in Anganwadis and preferably ICDS funds shall be spent by making use of village communities, self-help groups and Mahila Mandals for buying of grains and preparation of meals". Chief Secretaries of all State Governments/UTs. must indicate a time-frame within which the decentralisation of the supply of SNP through local community shall be done.



❑ **22.04.2009¹⁸**

¹⁷ Annexure 10

¹⁸ Annexure 11

- ❑ The letter dated 24.02.2009 No.5-9/2005/ND/Tech (Vol.II) has been annexed to the affidavit dated 2nd March 2009 filed by the Union of India. It is directed that norms indicated in the said letter addressed to all the State Governments and Union Territories have to be implemented forthwith and the respective States/UTs would make requisite financial allocation and undertake necessary arrangements to comply with the stipulations contained in the said letter.
 - ❑ Supplementary Nutrition Food (SNF) in the form of THR shall be provided to all children in the age group of 6 months to 3 years, an additional 300 calories to severely underweight children in the age group of 3 to 6 years, pregnant women and lactating mothers as per paras 5(c), 5(d) and 5(e) of the letter dated 24th February 2009.
 - ❑ As far as adolescent girls are concerned, they would continue to be covered by the entitlements of the Nutritional Programme for Adolescent Girls (hereinafter referred to as 'NPAG') and Kishori Shakti Yojana (hereinafter referred to as 'KSY') till such time as a comprehensive universal scheme for the empowerment of adolescent girls called 'The Rajiv Gandhi Scheme for the Empowerment of Adolescent girls' is implemented within six months from the date of the order.
 - ❑ SABLA - for adolescent girls in certain districts.
- ❑ **10.02.2017¹⁹**
- ❑ In view of the passage of the National Food Security Act, 2013, nothing further survives in this petition. It is accordingly disposed of.
 - ❑ In case the petitioner has any grievance with regard to the implementation or otherwise of the National Food Security act, 2013, he may file a fresh petition.

National Food Security Act, 2013 10.09.2013, w.e.f 05.07.2013

The following are the important sections of the NFSA that pertain to children:

- *S. 2(9) - meal means hot cooked or pre-cooked and heated before its service meal or take home ration, as may be prescribed by central govt.* As till date only 17 states provide hot-cooked meals and the rest provide ready to eat meals.
- *S. 5 - Nutritional Support to Children (up to 14 years)* - whether it should be for only up to 14 years or should be beyond is a matter of discussion. (See Table 4 for Schedule II)
- *S. 6 - Prevention and management of child malnutrition*
- *S. 7 - Implementation of schemes for realization of entitlements.* - Between the state and the centre the funds goes 50-50 between all states except the north east states where it is 90% Centre 10% State
- *S. 8 - Right to receive food security allowance*

¹⁹ Annexure 12

- *S. 14 - Internal grievance Redressal Mechanism* - Can approach Food Commission to ensure the grievance cells are set up. But the Food Commission is busy handling PDS violation cases. In the Swaraj Abhiyan²⁰ case the Food Commissions need to be mandatorily set up. As none of the redressal cells are not set up one can go directly to High Courts for implementation of the NFSA
- *S. 15 - District Redressal Officer*
- *S. 16 - State Food Commission*

Sr. No.	Category	Type of meal	Calories (Kcal)	Protein (g)
1	Children (6 months to 3 years)	Take Home Ration	500	12-15
2	Children (3 to 6 years)	Morning Snack and Hot Cooked Meal	500	12-15
3	Children (6 months to 6 years) who are malnourished	Take Home Ration	800	20-25
4	Lower primary classes	Hot Cooked Meal	450	12
5	Upper primary classes	Hot Cooked Meal	700	20
6	Pregnant women and Lactating mothers	Take Home Ration	600	18-2

Table 4: Nutritional standards in schedule II

The Midday Meal Rules, 2015 w.e.f. 30.09.2015²¹

- *R. 2 (d) -Meal means hot cooked meal*
- *R. 3 - Entitlement for nutritional meal*
- *R. 4 - Place of serving meal - school only*
- *R. 5 - Preparation of meals and maintenance of standard and quality.*
- *R. 9 - Food Security Allowance*

The Supplementary Nutrition (under the ICDS Scheme) Rules, 2017 - w.e.f. 20/02/2017²²

These rules have been made to regulate the entitlements specified under the provisions of the NFSA for every pregnant woman and lactating mother till six months after child birth, and every child in the age group of six months to six years (including those suffering from malnutrition) for three hundred days in a year, as per the nutritional standards specified in Schedule II to the said Act.

- *R. 3 - Nature of Entitlements*
- *R. 4 - Place of serving meal - The Anganwadi centre*
- *R. 5 - Supplementary Nutrition under ICDS (Table No. 5)*
- *R. 6 - Nutritional Standards - As per Nutritional and Feeding norms*

²⁰ Writ Petition (C) No. 857 Of 2015. Annexure 13

²¹ Annexure 14

²² Annexure 15

- R. 7 - *Preparation of meal and maintenance of its standard and quality* - Periodic checks need to be carried out
- R. 8 - *Food Security Allowance*
- R. 9 - *Responsibility to monitor and review* - The national nutritional discussion ready to eat meal is to be strictly not allowed

Sr. No.	Categories	Type of meal or food as per the nutritional standards specified in Schedule II of the Act
1.	Children (Between 6 to 36 months)	Take home ration as per Anganwadi Services (Integrated Child Development Services) guidelines in conformity with the provisions of the Act.
2.	Malnourished children (Between 6 to 36 months)	The same type of take home ration as above with food supplement of 800 calories and 20-25 grams of protein.
3.	Children (Between 3 to 6 years)	Morning snacks and hot cooked meal as per Anganwadi Services (Integrated Child Development Services) norms.
4.	Malnourished children (Between 3 to 6 years)	Additional 300 calories of energy and 8-10 grams of protein in addition to the meal or food provided to children between three to six years.
5.	Pregnant women and lactating or nursing mothers	Take home ration as per Anganwadi Services (Integrated Child Development Services) guidelines in conformity with the provisions of the Act.

Table 5: Supplementary Nutrition under ICDS

Despite the exhaustive list of positive orders the following were the issues and challenges flagged when it comes to right to food of children:

1. ICDS - budget cuts have been there since 2014 and onwards (See Figure 6)
2. Non supply
3. Hygiene
4. Cooking quality
5. Funds misappropriation
6. Food security act
7. BPL criteria
8. Implementation of AGWs
9. AGWS on demand
10. Privatisation – contractors appointed - proviso under rules
11. Allocation – misused – State diverts the fund and uses it somewhere else
12. Corruption
13. Pilferages

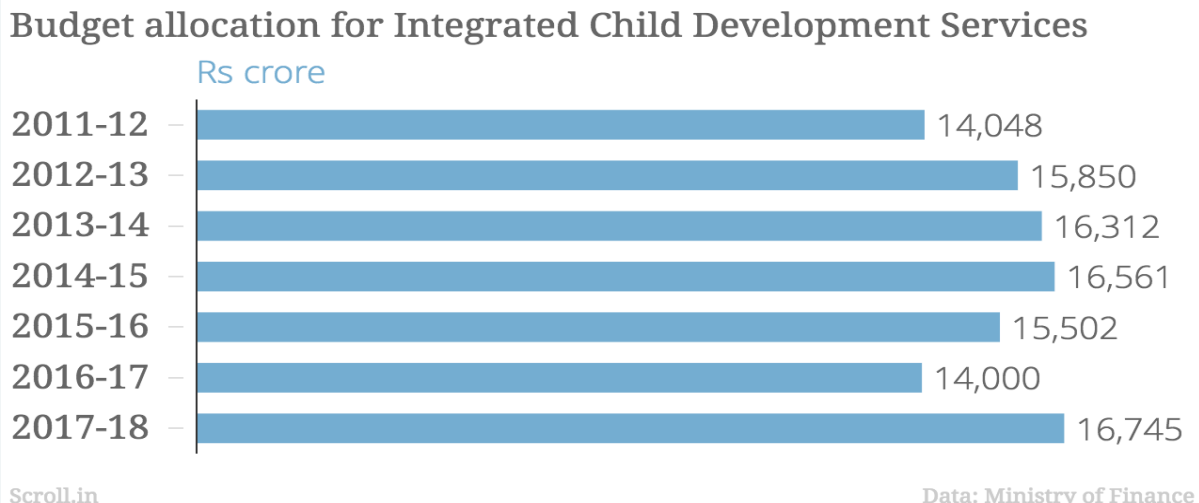


Figure 6: Budget Cuts

Litigation in Trial Courts and Juvenile Justice Boards: Strategies & Challenges



The day ended with a session on Strategies which lawyers can use in trial courts which focused on the JJ and POCSO Acts. The resource persons, Zishaan Iskandari, Rachit Gupta and Ashish Kumar, pointed out if a lawyer is working on POCSO & JJ, it becomes compulsory to visit the trial courts as we are the appreciator of law and interpreter too.

The session had two JJB lawyers from Delhi did a mock trial of instances where children get caught in different types of offences and the points that were put forward as regards their bail. They put forward the Prosecution and defense points and sought judgment from the participants.

Issue- we all agree that in criminal law bail is a right and while arguing the case of a CCL we often compromise with the best interest of the child.

Conclusion - “The responsibility of the persons who are going to represent the CCL is not just to present a strong case and prove his innocence but also to see the best interest of the child and play a thrust as a child rights advocate – ask for the action against the gangs and other persons who are forcing such persons into it and consequently liable for it.”

The third resource person talked about the specific issue of burden of proof under s. 29 of the POCSO Act as it had come up numerous times in the preceding sessions and also special representation for victims under POCSO Act. As victim’s representation is generally sidelined it is tried that to make the voice of the child-victim reaches the court - sec 301 CrPC says that one can represent the victim with 2008 amendment - special public prosecutor - proviso - victim also has a right to choose the lawyer.

It is so because the legislative intent was to reinforce the special focus of this Act and therefore lawyers have been given an opportunity to represent the intent of the Act. Though they have a very limited scope as being the victim’s

lawyer under POCSO, but if one catches the spirit of the intent of the law nothing is more important than the victim and his/her lawyer.

This session covered the topic of Children with disabilities which was discussed by Delhi Advocate Swati Sood and those children who get involved in the vicious cycle of Substance abuse which was examined by Vaibhav Sharma from Safe Society.

1. Children with Disabilities:

The discussion began with talking about the various categories the new Persons with disabilities which have been listed below as per Schedule I of the Persons with Disabilities Act, 2016:

- i. Physical disability – Locomotor disability, Visual impairment, Hearing impairment, speech and language disability etc.
- ii. Intellectual disability – specific learning disabilities, autism spectrum etc.
- iii. Mental behaviour - mental illness
- iv. Disability caused due to - chronic neurological conditions, Blood disorder, etc
- v. Multiple Disabilities



The relevant sections which were discussed are reproduced below:

Sec 3: Equality and non-discrimination:

Sec 4: Women and children with disabilities:

Sec 6: Protection from cruelty and inhuman treatment:

(1) The appropriate Government shall take measures to protect persons with disabilities from being subjected to torture, cruel, inhuman or degrading treatment.

(2) No person with disability shall be a subject of any research without,—

(i) his or her free and informed consent obtained through accessible modes, means and formats of communication; and

Sec 17: Specific measures to promote and facilitate inclusive education:

The following Relevant Government Plans were elaborated upon briefly:

- NATIONAL POLICY FOR CHILDREN, 2013
- NATIONAL POLICY OF EDUCATION, 2016

National Policy for Children, 2013

4.6 of National Policy for Children

- (v) Ensure that all out of school children such as child labourers, migrant children, trafficked children, children of migrant labour, street children, child victims of alcohol and substance abuse, children in areas of civil unrest, orphans, children with disability (mental and physical), children with chronic ailments, married children, children of manual scavengers, children of

sex workers, children of prisoners, etc. are tracked, rescued, rehabilitated and have access to their right to education

- ❑ (vi) Address discrimination of all forms in schools and foster equal opportunity, treatment and participation irrespective of place of birth, sex, religion, disability, language, region, caste, health, social, economic or any other status
- ❑ (vii) Priorities education for disadvantaged groups by creating enabling environment through necessary legislative measures, policy and provisions

National Policy of Education, 2016

- ❑ 6.11 Education of Children with Special Needs
 - 6.11.1 Every child has the right to develop to her full potential and schools are expected to offer a stimulating experience that nurtures learning by all students. But children are different from each other and among them diversities exist on various dimensions. Having special needs is one such dimension. An inclusive approach has long been advocated by education experts. The recognition that learners with different degrees of disability, also referred to as children with special needs (CWSN), which would include varying degrees of visual, speech and hearing, loco motor, neuromuscular and neurodevelopmental disorders, (dyslexia, autism and mental retardation), need to be given the opportunity to participate in the general educational process has yet to become widely acceptable by school managements. The need to provide for students exhibiting difficulty with behavioral communication or encountering from intellectual, physical or multiple challenges is often treated as something that only special schools can handle.
 - 6.11.2 There is a marked difference between what was earlier envisaged and the prevailing situation on the ground.
 - The National Policy for Persons with Disabilities, 2006 (PWD) voiced the need for mainstreaming of persons with disabilities in the general education system through inclusive education, identification of children with disabilities through regular surveys, enrolment in appropriate and disabled friendly schools till successful completion of education. More recently the RTE Amendment Act (2012) stated that “disadvantaged groups” includes children with disabilities and thus all the rights provided to children belonging to disadvantaged group shall apply to children with disabilities also. According to another important provision of the RTE Amendment Act, certain specific excluded categories of disabled children namely children with “multiple” or “severe” disabilities were to be provided with the choice of attaining home based education.
 - 6.11.3 The importance of preparing teachers who can teach in inclusive classrooms following an inclusive pedagogy has been referred to in the National Curriculum Framework for teacher education (NCFTE), 2009. NCERT in various position papers has underscored the need for developing a positive attitude among teachers, administrators, and other students in their attitudes to children with special needs.

- 6.11.4 Providing special training to every teacher will neither be feasible nor cost-effective. There is a need for a mechanism which can respond to the school Principal or teacher who seeks special training to be imparted to handle children with specific kinds of learning difficulties. Sometimes all that may be needed is professional advice for a limited duration; sometimes it may need more training.

2. Drug and Substance Abuse among children

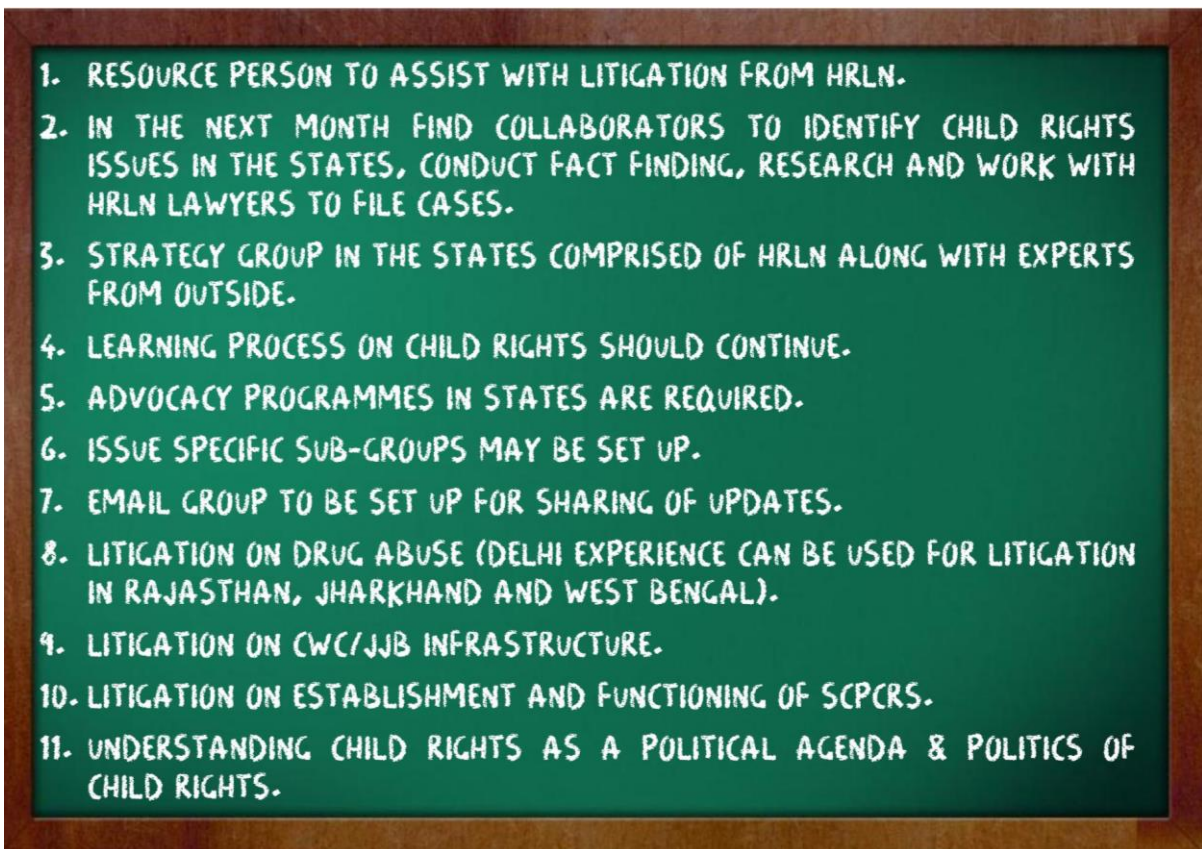


A short video of the vulnerabilities of street children to drug abuse was shown. Thereafter litigation on this aspect was discussed by Vaibhav Sharma from Safe Society.

Relevant court orders: Delhi High Court has directed in AASHA vs. State Govt. Of NCT of Delhi²⁴ the police to enforce Section 77 of Juvenile Justice Act which provides for punishment to anyone giving intoxicating liquor/drugs to children by treating thinners, whiteners, correction fluid, vulcanizing solutions as “intoxicating liquor”

Plan of Action and way forward

The Consultation concluded with the Action Plan, which was decided as follows:



²⁴ W.P.(CRL) 2401/2017. Annexure 17