SUBMISSION ON STRENGTHENING OF THE TREATY BODY SYSTEM IN INDIA

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July 07, 2020

Background Information:

Shambros Advocates and Solicitors is a Law firm based in New Delhi, India. Along with litigation cases at the District Courts, High Court and Supreme Court, we also deal with quasi-judicial matters with different Indian Government Departments.

The Firm also does pro bono work for asylum seekers and refugees based in Delhi at domestic, as well as international level, including the International Criminal Court.

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INTRODUCTION

India has been grappling with the issue of human rights violation at various levels. The same has been discussed at domestic as well as international platform on a number of occasions. In order to combat with the situations of violation of Civil and Political Rights (CPR), Economic, Social and Cultural Rights (ESCR), Discrimination against Women, and Rights of Child, the Indian Government has, time and again, introduced new legislations and also made amendments to the existing provisions.

The three pillars, Legislature, Executive and Judiciary, have been working in tandem, to achieve the goal of elimination of all categories of violations. Albeit, the process has faced certain roadblocks over the years, owing to sometimes a ‘political vendetta’ or ‘vested interests of a few’, yet we have come a long way to deliver positive results.

Over the years, there has been an increase in participation, by NGOs and different implementing partners, in the process of trying to keep a lid on the increasing cases of violations, while hoping and working in the direction of eliminating of the same.

The following submission discusses the scenario revolving around the violations of CPR, ESCR, Discrimination against Women, and Rights of Child, since India is a signatory to the respective conventions.

With this submission, we have just touched the tip of the iceberg and in a cursory manner discussed the problems involving human rights violations. Yet, with the proposals, we have tried to deliver a comprehensive solution to the existing scenario at large.

1. CIVIL AND POLITICAL RIGHTS (CPR)

Prior to the enactment of the International Covenant on Civil and Political Rights (ICCPR) in 1966, India was ahead of the time to include all the major provisions of the Convention under the Constitution of India in 1950. With the changes in time and scenario, the situation deteriorated with respect to the violation of human rights in India.

The Third Universal Periodic Review (UPR) of India, the government failed to accept key recommendations, including use of force by law enforcement officials.[[1]](#footnote-1) Despite the provisions, such as fundamental rights, right to life and liberty, freedom of religion, so on and so forth, already existing under the Constitution, there have been gross violations of these rights.

A.1. POLICE BRUTALITY

The issue of police brutality has been a blot on the Indian Constitution for a very long time. Such cases have been making rounds of the news domestically as well as internationally. With the increase in social awareness of the citizens, and the extensive use and reporting on social media, a large number of cases are coming to limelight, which otherwise would have never caught the eye of the public.[[2]](#footnote-2)

The recent statistics for 2018 have shown a large number of deaths in judicial and police custody indicating towards foul play and suspicious circumstances.[[3]](#footnote-3) As these numbers have been flagrantly high over the years, they are indicative of the fact that the superior authorities have turned a blind eye towards the reckless behaviour and abuse of power.

In 2016, a miscellaneous application was filed to an earlier rejected writ petition, under the case title Dr Ashwini Kumar vs Union of India[[4]](#footnote-4) in which the petitioner requested from the Hon’ble Supreme Court to pass directions to *“the Central Government to enact a suitable stand-alone, comprehensive legislation against custodial torture”.* The application was rejected on the grounds, as stated by the Hon’ble Supreme Court, that the case of torture does not qualify as an exceptional case where there is a vacuum and no legislation.[[5]](#footnote-5)

Certain guidelines were formulated by the Hon’ble Supreme Court under the case of Prakash Singh vs. Union of India[[6]](#footnote-6) to allow the police authorities to maintain autonomy while being accountable. They also provided for the establishment of a State Security Commission, a Police Establishment Board, and a Police Complaints Authority, but the same were not abided by in entirety.[[7]](#footnote-7)

Furthermore, a myriad of cases have been registered against the police personnel for the gross violation of human rights and commission of various crimes. The number of cases under the latter category more than doubled in number from 2017 to 2018. Such cases saw a conviction rate of way less than 10 percent, indicating towards impunity towards police officers.[[8]](#footnote-8)

A.2. PRE-TRIAL AND UNDERTRIAL DETENTION

The issue of pre-trial and undertrial detention has been a major concern for the police, judiciary, and the defendant involved. The legal presumption of their innocence until proven otherwise, results into difficulties for the defendants during the detention. They are subjected to physical and psychological distress, which might even be more onerous than the one faced by the convicts under detention.

Moreover, the miserable situation of prisons in India is a fact known to all. As per an independent international study, India ranks at 18th highest in the world and 4th highest in Asia in the undertrial population.[[9]](#footnote-9) A further increase in the number of prisoners and a decrease in the number of functional prisons, has added an immense pressure on the already overcrowded prisons.[[10]](#footnote-10)

Over the years, many cases have come to limelight where death of a prisoner was reported.[[11]](#footnote-11) In many such cases the family members of the deceased claimed foul play on the part of police officials. Further to add on to the agony of the grieving families, and not serving them with justice, no conviction took place in cases of custodial deaths and torture.[[12]](#footnote-12)

A.3. INVOLVEMENT OF STATE AGENCIES/CIVIL SOCIETY/NGOs

As we have noticed in the data above, pertaining to the conviction of police personnel, the grim reality in front of us all is reflective of the fact that in majority of the cases, a charge sheet is not even issued against them, let alone a conviction. Even though there are NGOs working to provide justice to the grieving families, the success rate is highly dependent on the honesty of the superior authorities.

There are a large number of NGOs in India which are working on the ground in order to raise the issues regarding police brutality and voice the concerns of victims’ families. One such NGO is Commonwealth Human Rights Initiative, which has recently filed a petition with the National Human Rights Commission (NHRC) to look into the death of 15 individuals due to police excesses during the COVID-19 lockdown period.[[13]](#footnote-13)

Human Rights Law Network, another NGO, put together a fact-finding report into an alleged case of torture of 2 youth in police custody, in the city of Jaipur, Rajasthan. The local police took up the matter and a committee was set up to look into the same.[[14]](#footnote-14) Even though the report was submitted over a year ago, yet there is no status update on the same.

International Bridges to Justice is a leading international NGO working within India for the rights of prisoners. They conduct regular awareness sessions within different prisons, educating prisoners about their rights to free legal aid, filing of bail, and prison standards. As many of the inmates are illiterate, the NGO sets up creative and informative workshops to educate the prisoners. They have also partnered with the Delhi State Legal Services Authority (DSLSA) and Delhi Prisons (Tihar) for lawyer trainings and prisoner rights awareness.[[15]](#footnote-15)

A.4. PROPOSAL

As we have noticed in the above-mentioned section, most of the NGOs or independent activists, in case of police misconduct, reach out to help the victim and/or the family, since it is hard to find a proper and ‘honest’ channel to resolve the matter. Hence, it is required to nip the issue in the bud, and address the same by amending certain provisions.

An amendment should be made to the provisions under the Legal Services Authorities Act, 1987[[16]](#footnote-16) making it mandatory for senior and experienced lawyers to render their services to the Legal Aid, akin to the procedure of Corporate Social Responsibility. The said provision in application can be reserved for the most critical cases received by the legal services authorities, which will give the opportunity to the defendant to benefit from the knowledge and experience of a senior lawyer.

Also, the principle of ‘Command Responsibility’ should be introduced in the police forces. Such a system will increase the accountability of every personnel at every level throughout the country. It will act as a deterrent to politics and nepotism within the forces and further help in speedy disposal of complaints if every officer is made accountable.

1. ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ESCR)

In 1979, while becoming a party to the International Covenant on Economic, Social and Cultural Rights, India expressed her ‘concern’ regarding the term ‘self-determination’.[[17]](#footnote-17) As per the Indian view, self-determination is a principle which can extend only to situations of domination and colonialism and cannot extend to the Indian context owing to her sovereignty. Even though the underlying circumstances which gave birth to the said principle were political and economic independence from external forces, it has evolved over the years.[[18]](#footnote-18)

B.1. HUMAN RIGHTS INSTITUTIONS

India, while agreeing to the idea of having a rights-based approach, and equating ESCR and CPR under a universal ambit of ‘human rights’, held the view that every country should have National Human Rights Institutions[[19]](#footnote-19), established in accordance with the Paris Principles.[[20]](#footnote-20)

National Human Rights Commission (NHRC) of India was established in 1993, under the Protection of Human Rights Act (PHRA), 1993.[[21]](#footnote-21) The said Act further requires for the establishment of State Human Rights Commission (SHRC), in order to look into the matters of violations with respect to entries enumerated in the Seventh Schedule, List II and III of the Indian Constitution[[22]](#footnote-22), touching upon police department, local governance, communication and transportation infrastructure, application of criminal law, and so on and so forth.

Despite the fact that such elaborate provisions are available under the Constitution as well as independent legislation, major lapse is recorded on behalf of the functioning of these Commissions. There are several states where either there are no functioning SHRCs, or the Commissions are existing without a chairperson, and even in some cases there is no website or provision of e-filing of complaints.[[23]](#footnote-23)

The total number of human rights violation cases recorded by SHRCs until 2017-2018 is a whopping number of 1,889,457.[[24]](#footnote-24) Out of all these cases, 8,884 were *suo motu* taken up by a handful of SHRCs, and 1067 were *suo motu* taken up by NHRC.[[25]](#footnote-25) These figures reflect a shocking state of functioning of these Commissions.

Moreover, the powers of the Commissions are inherently curtailed to providing ‘recommendations’ to the concerned government.[[26]](#footnote-26) Despite the fact that the Commissions are autonomous bodies, yet their powers are limited to drafting reports and making recommendations, as they cannot enforce their decisions. Also, the dependency of these Commissions (NHRC and SHRC) on the government to receive their funding leaves them at the mercy of a few politicians, while making it easier for the latter to bargain.[[27]](#footnote-27)

B.2. OCCUPATIONAL HEALTH

Majorly all the job sectors inherently carry occupational hazards, including mental, physical and social well-being of all the workers. In India, almost 93% of the labour works in the informal sector.[[28]](#footnote-28)

The uncertainty around the numbers, reflects the fact that India has a large number of workers in the unorganized sector, for it is next to impossible for any authority to quote a number with certainty.

In such a situation, it is imperative for the government to introduce legislation ensuring safety of workers across the sector. In furtherance of this, the government has introduced the Code on Occupational Health and Working Condition, 2019 (OHWC). Even though the Code is in the nascent stages and is yet to be codified into a legislation, politicians, bureaucrats and think tanks are already getting into rounds of discussions on pros and cons of the same.[[29]](#footnote-29)

The OHWC subsumes and replaces 13 labour laws relating to safety, health and working conditions, including, Factories Act, 1948; Mines Act, 1952; Dock Workers Act, 1986; Contract Labour Act, 1970; and Inter-State Migrant Workers Act, 1979. The Code also aims at setting up occupational safety boards at the national and state level, in order to advise the central and state governments on the standards, rules, and regulations to be framed under the Code.

A major drawback in the proposed OHWC is that it only covers workers employed in establishments with at least 10 workers or more. The size-based threshold for the applicability of labour laws will jeopardize the rights of such workers who are employed in establishments with less than 10 workers, even when they are also engaged in hazardous jobs.

B.3. INVOLVEMENT OF STATE AGENCIES/CIVIL SOCIETY/NGOs

NHRC works closely with a group of NGOs, called as Core Group of NGOs and Human Rights Defenders.[[30]](#footnote-30) An elaborate list of the NGOs in the order is indicative of the fact that NHRC is working closely with different implementing partners in various areas such as child rights, public health, mental health, workers in manual scavenging, so on and so forth.

The National Commission along with the OHCHR, held an International Round Table of National Human Rights Institutions for ways to implement Economic, Social and Cultural Rights.[[31]](#footnote-31) During this round table, different international members shared their countries’ position on the ESCR, and gave their valuable inputs.

A large number of NGOs are also working with the unorganised labour sector in different parts of the country trying to rise up to fight for their rights. In one such instance, Occupational Health and Safety Association, an NGO, filed a writ petition with the Hon’ble Supreme Court of India, seeking directions for appointment and constitution of a committee for the monitoring of the working of thermal power plants in India and to keep check on the health and safety norms for the workers working in their power stations.

They also sought for payment of compensation to the workers who are victims of occupational health disorders and framing a scheme of compensation for workers in cases of occupational health disorders.[[32]](#footnote-32) The NGO succeeded in convincing the Hon’ble Court to pass directions to the State High Courts to initiate *suo motu* proceedings in larger interest of the workers in the coal sector.

B.4. PROPOSAL

It is imperative for the government to streamline the working of human rights commissions at the State and National level. As we have already seen their powers are limited to making recommendations, which frustrates the entire purpose of being an autonomous body. They should be given the power to independently investigate cases of human rights violation. Being a ‘recommendatory quasi-judicial body’ does not do justice with the functions of the Commission.

Furthermore, the Hon’ble Supreme Court should take up the matter of looking into the functioning of SHRC and review their reports biennially. As the facts mentioned above, the disappointing state of SHRCs across the country jeopardizes the rights of millions of people who might need their assistances. Also, having an annual surprise visit from the office of the State High Courts to the SHRC, will help in keeping the staff on toes.

Engagement of NHRC and SHRCs in organizing workshops to educate vulnerable labour about the mental and physical health around their nature of work, will help in avoiding a large number of issues. Since most of this vulnerable labour is illiterate, it is important to reach out to them educate them about their rights and motivate them to raise their voice against any violation. In many situations it is possible for the labour union to stand corrupted and overlook the interest of the labourers at large. In order to avoid such a situation, the Commission should step up to protect their rights.

1. DISCRIMINATION AGAINST WOMEN

India has been a patriarchal society since archaic times. Discrimination against women has been woven into the fabric of the society and accepted by all as mute spectators. “Discrimination” carries a wide connotation, yet the same has been witnessed by women in every walk of life, starting from the comfort of their domestic household to being in power in a public office.

C.1. MARGINALIZED REPRESENTATION IN PUBLIC OFFICES

Albeit we have had some women in public office, representing the country, yet the number is limited to our fingertips. Even as we have progressed in the 21st century, Indian women at large are still struggling to match at par with the fellow gender.

A bill on 33% reservation for women in the Lower House (Lok Sabha) and State Legislative Assemblies was initially introduced in 1996, which was not passed by the then Lower House. A few years later, in 2008, the same bill was reintroduced with some amendments. Unfortunately, the same never saw the light of the day and still keeps the fate of women representatives in limbo.[[33]](#footnote-33) The arguments presented, in favour and against the Bill, by different factions and politicians, are tainted by their political agendas. As a result, the fate of women representation lies with the whims and fancies of a handful of politicians.

As we have started progressing in the domain of international cooperation, the domestic political scenario is still struggling with equal representation. The data on Women in Politics[[34]](#footnote-34), collated by UN Women, as per 2019, reflects India to be in a position where we have not complied with the request of 33% as mentioned above. This leaves us with a bleak scenario for women representation in public offices.

Moreover, a large number of data collected via surveys suggests that women who are involved in politics are more susceptible to threats and/or violence, irrespective of whether they are in America or Europe or Arab countries or Asia-Pacific region.[[35]](#footnote-35) Even though the report does not mention the names of the candidates interviewed or their country of origin, it will be futile to believe that such a scenario does not exist in India, where society is till date patriarchal.

C.2. VIOLENCE AGAINST WOMEN

India has been the focal point of international news on the issues revolving around the safety and integrity of women. Gender-based violence, victimising women, is an unfortunate yet a common phenomenon occurring pan India. Starting from eve teasing to crimes as heinous as rape and murder, nearly all the cities and towns in India have witnessed such atrocities. Infamously, the capital, Delhi, has also been referred to as ‘the rape capital’ innumerable times.

India has seen thousands of “registered” rape cases until the year 2017.[[36]](#footnote-36) The statistics on rape cases categorically reflect that the conviction rate is nearly one-fourth of the number of cases charged, which reflects a major gap in administering justice. Moreover, under many circumstances, unfortunately a case is not even registered by the victim, as she succumbs to the family pressure of avoiding the ‘bad press’.

Yet, a large number of cases when successfully reach the stage of a court hearing, still get delayed by the lengthy judicial process. The most recent and unfortunate example which gained limelight across the globe was the *Nirbhaya Case (Delhi Gang Rape Case 2012)*.[[37]](#footnote-37) Even though as the death sentence was announced, for the four accused, by a Fast Track Court within the year from the incident, the process to comply with the legal procedure, including appeals and pardons, delayed the execution of the sentence by 7 years.

Even as the legislature and judiciary have taken active steps in order to repeal and sensitize the existing system and pass death sentences against accused, yet the numbers do not seem to stagger.

C.3. INVOLVEMENT OF STATE AGENCIES/CIVIL SOCIETY/NGOs

The involvement of NGOs and civil society actors have tremendously helped in bringing about a change in different walks of societal needs. A joint effort between state agencies and government departments and NGOs in educating women about their rights and duties will go a long way.

There are precedents of involvement of NGOs in bringing about unprecedented changes. The most recent is of the abolition of *‘triple talaq’*. *Bharatiya Muslim Mahila Andolan* is an NGO voicing the concerns of women from the minority community. They also published a report[[38]](#footnote-38) opposing the custom of triple talaq and several others, voicing their concerns against the disparity under the Muslim Family Law in India. As for the former, the Supreme Court of India declared the same as unconstitutional.[[39]](#footnote-39) But the community is still hopefully waiting for a change in their personal laws.

The judiciary took this leap of faith, despite the fact that while ratifying CEDAW, India made a declaratory statement mentioning “…non-interference in the personal affairs of any community…”.[[40]](#footnote-40) Certainly it took the government a few years to understand the need of the hour, but the concerted efforts of the NGOs and the civil society members yielded positive results.

Similarly, Association for Democratic Reforms, an NGO educating and fighting for their democratic rights of the citizens, has also conducted a poll on their website about Women in Politics.[[41]](#footnote-41) The same is based on a vast research conducted on the candidates who contested for the General Elections 2019.[[42]](#footnote-42)

C.4. PROPOSAL

As the above-mentioned organisations set an example for the other civil society actors and citizens to self-educate themselves on issues which the States are not ready to address, it also furthers their responsibility to take real time steps *suo motu.*

Strict steps are the need of the hour for enhancing security for women across the country. Post the Nirbhaya case, in 2013 the then government created non-lapsable corpus fund under the title *Nirbhaya Fund* which was intended to strengthen and administer safety and security of women.[[43]](#footnote-43) Even though as over the years states have received millions in allocation, yet the utilisation of the same stays below 20 percent.[[44]](#footnote-44)

In order to ensure proper utilisation of the funds for the right cause, accountability of the concerned departments at the Central and State levels is required. A joint effort between National Commission for Women (NCW) and Ministry of Women and Child Development (MWCD) and relevant stakeholders and NGOs can lead to better accountability of the State governments with respect to utilisation of the funds. NGOs can run workshops, such as self-defence for women, provide better legal assistance, in collaboration with the State departments, and eventually share the data with the MWCD and CEDAW.

Despite all the hardships being faced by the women in India, they are yet coming out as a strong community, fighting for their rights. As we have seen a jump in the female electorate, it can be implied that the awareness amongst the gender is increasing in order to take an informative decision. Educating women about the power they hold while being in politics is imperative. As most of the political parties have a youth wing to engage the young population, the same can engage in holding workshops in collaboration with NGOs to involve the female population within the active circles of politics. This will give them a first-hand opportunity to learn about the working of the said political party and grow professionally in healthy work environment as well.

1. RIGHTS OF CHILD

India ratified and adopted the provisions of United Nation’s Convention on the Rights of the Child 1990 (UNCRC) in 1992. Even though the UNCRC defines a child as under the age of eighteen years, yet it has left the interpretation of age open to the age of majority as applicable under different provisions within the domestic legal infrastructure.[[45]](#footnote-45)

D.1. CHILD LABOUR

Owing to the issue of poverty and lack of education, child labour has always been an issue crippling the Indian society. Household poverty has been the major factor contributing to the increase in child labour, as children are seen as an ‘extra set of earning hands’. Working and assisting in a household is principally different from child labour. Unfortunately, under the Indian legal system, no clear distinction has been defined between ‘child labour’ and ‘working children’.[[46]](#footnote-46) As a result the categories under the census results are highly misleading.

Representation of the accurate data on child labour continues to be a challenge. The data available is from Census 2011, which is almost a decade old, does not paint the real picture and acts as a hindrance in implementing an effective system in combating the issue.[[47]](#footnote-47)

While staying in tune with the Sustainable Development Goals[[48]](#footnote-48) and global consensus on eradication of child labour, India also ratified the International Labour Organization (ILO) Convention 138[[49]](#footnote-49) and 182.[[50]](#footnote-50) These two conventions along with the amendment in The Child Labour (Prohibition and Regulation) Amendment Act, 2016[[51]](#footnote-51), aim at complete prohibition of employment or work for children below 14 years in any occupation or process and also prohibition of the employment of adolescents (14 to 18 years) in hazardous occupations and processes.[[52]](#footnote-52)

Despite the fact that all the above-mentioned legal provisions are in play to curb the menace, yet the ground reality is far from realising the goal. As mentioned above, the Census data from 2011 cannot justify the situation in the current scenario. As a result, it is hard to assess if the implementation of the above-mentioned provisions have brought about any change in the plight of children.

Furthermore, the issue of child labour is directly linked to the issue of lack of education. Lack of motivation and willingness among parents/guardians, leave children at the verge of exploitation. The government has implemented laws, such as Right to Education Act 2009[[53]](#footnote-53), mandating free education for children until the age of 14 and Mid-Day Meal Schemes[[54]](#footnote-54), as an added initiative to enrol more students and keep the drop-out rate law. Yet, the shoddy implementation of these legislations have left children at the mercy of their parents’ will.

D.2. VIOLENCE AGAINST CHILDREN

In the Indian scenario, violence against children is most widely recorded in the form of sexual offences and trafficking. Unfortunately, in both the situations, a majority of the children come from an underprivileged strata, and the offender takes an advantage of the same. In most of these cases children are abducted by the offenders as it becomes easier for them to carry out the offence.

The number of missing children has gone up drastically over the years. A report by the National Crime Record Bureau (NCRB) reflects the increase in numbers from 2016 to 2018, despite having a stringent legal procedure in place for their protection.[[55]](#footnote-55) Most of the missing children are trafficked and pushed either into the sex trade or bonded labour.

Following up on the surge in number of cases of sexual offences against children, in 2012 the government introduced the Protection of Children from Sexual Offences Act, 2012 (POCSO) defining and criminalising acts such as penetrative sexual assault, sexual assault and sexual harassment.[[56]](#footnote-56) The act also allowed for the setting up of Special Courts[[57]](#footnote-57) trying cases exclusively from the Act where the victim is a minor. Even though the Special Courts have been functioning for the past few years, the conviction rate as well as the case closure rate is at abysmal levels. The fact that no conclusive data is available on the conviction rate post 2016[[58]](#footnote-58), and the case pendency rates[[59]](#footnote-59) are sky high, is indicative of the situation that such special cases are not treated with the same urgency as others.

As per the recently released report by the NCRB, the number of cases under POCSO increased tremendously within a year. A shocking number of 32,608 cases were reported in 2017 while 39,827 cases were reported in 2018 under the Protection of Children from Sexual Offences Act (POCSO).[[60]](#footnote-60)

The senior judiciary has always been sensitive about the issue involving violence against children. In furtherance of the provisions laid down under The Juvenile Justice (Care and Protection of Children) Act, 2015[[61]](#footnote-61) and Juvenile Justice (Care and Protection of Children) Model Rules, 2016[[62]](#footnote-62) the Hon’ble Supreme Court in the case of Bachpan Bachao Andolan vs. Union of India[[63]](#footnote-63) laid down that a special Standard Operating Procedure (SOP) should be formulated. The SOP will demand a coordinated effort between the local police, State High Courts and the State Legal Services Authorities to follow up on the cases of missing children.

A pitch[[64]](#footnote-64) was also made by the Nobel Laureate Kailash Satyarthi to set up ‘National Tribunal’ in order to have a speedy trial process and expeditious disposal of all the cases involving violation of child rights. The time is appropriate for taking the required steps in order to set up a tribunal so as to provide a safe environment for the growth of children fulfil the SDG within the stipulated time.

D.3. INVOLVEMENT OF STATE AGENCIES/CIVIL SOCIETY/NGOs

A large number of NGOs are involved with the ground work as well as for the purposes of lobbying between the government and the UN. Also, international NGOs such as India Alliance for Chid Rights (Child Rights International Network), Save the Children, CRY, are involved in a plethora of projects, trying to bring about a change.

These and many more, partner with each other, to increase their outreach and help as many children as they can. The National Commission for Protection of Child Rights (NCPCR) teamed up with other NGOs to constitute a Committee for development of a Standard Operating Procedure for rehabilitation and restoration of juveniles in conflict with law and children in need of care and protection.[[65]](#footnote-65)

A large number of NGOs are also running care homes of varying capacity across the country, receiving children through a placement order by the Child Welfare Committee (CWC), established under the Juvenile Justice (Care and Protection) Act. Each district has a CWC as the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care & protection and to provide for their basic needs and protection of human rights.[[66]](#footnote-66)

D.4. PROPOSAL

Even though, a large number of stringent laws are in place to contain and bring down the violence against children and eliminate child labour, yet the numbers have been rising over the years. A major factor contributing to this menace is the illiteracy amongst the parents/guardians and also the children.

There are already a large number of campaigns running across major cities, and online, educating children about things such as ‘bad/unsafe touch’[[67]](#footnote-67). The need of the hour is to increase the outreach of such campaigns by taking them to smaller town and also rural areas where let alone online campaign, there is not even proper infrastructure for habitation. This will require engaging services of respective States’ Commissions for Protection of Child’s Rights.

Also, as has already been suggested at the international forum, the

In pursuance of the Hon’ble Supreme Court’s direction under a *suo motu* writ petition[[68]](#footnote-68), The Ministry of Law and Justice has taken up the task of setting up 1023 Fast Track Special Courts (FTSC), out of which 389 shall be exclusively set up for POCSO cases in Districts where pendency of such cases is more than 100.[[69]](#footnote-69) Along with setting up of FTSC, services of NGOs should be also sought for, as an observer in sensitive matters, in order to expedite the process.

**CONCLUSION**

After a careful study and research on all the topics as covered in the submission, it can be deduced that majorly all the issues are inter-linked. Merely by keeping a check and setting right the disposal of police duties, a large number of can be nipped in the bud.

In a nutshell, India does have all the required legal provisions in place for the preservation of human rights, with some suggested amendments and some on the way. But the issue lies with the implementation of such provisions, which can only be fixed by increasing the accountability of the concerned departments, by regular and successful involvement of implementing partners.

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2. Jeyaraj and Benicks: Five policemen arrested over India custody deaths, BBC News India, July 02, 2020 <https://www.bbc.com/news/world-asia-india-53260209> (Last accessed on July 04, 2020). [↑](#footnote-ref-2)
3. INDIA: ANNUAL REPORT ON TORTURE 2019, National Campaign against Torture, June 26, 2020, Pg. 06 <http://www.uncat.org/press-release/press-release-india-records-daily-five-deaths-in-custody-uttar-pradesh-tops-deaths-in-police-custody-during-2019/> (Last accessed on July 05, 2020).

“First, number of custodial deaths during 2019 remained over five persons per day. The National Human Rights Commission (NHRC) of India recorded a total of 1,723 cases of death of persons in judicial custody and police custody across the country from January to December 2019. These included 1,606 deaths in judicial custody and 117 deaths in police custody i.e. an average of five deaths daily. Second, deaths in police custody occur primarily as a result of torture. In 2019, NCAT documented death of 125 persons in 124 cases in police custody across the country. Third, the practice of torturing the suspects in police custody to punish them or gather information or extract confessions continued to be rampant. In 2019, NCAT documented several cases in which torture was used to extract confessions from suspects. Some of the victims who were tortured to extract confession during 2019 included a 17- year-old boy (name withheld) in Tamil Nadu who was tortured to death to extract confession in a case of theft;[…] Fourth, apart from extracting confession, torture is routinely perpetrated to extract bribe from the detainees or their relatives. According to the India Corruption Survey 2019 conducted by Local Circles in collaboration with Transparency International India, three most corruption prone departments in India were Property Registration & Land Issues, followed by Police and Municipal Corporation.[…] Fifth, apart from most common method of torture such as slapping, kicking with boots, beating with sticks, pulling hairs etc, NCAT recorded that torture methods used by the police also included hammering iron nails in the body (victims: Gufran Alam and Taslim Ansari of Bihar), applying roller on legs and burning (victim: Rizwan Asad Pandit of Jammu & Kashmir) […]. ” [↑](#footnote-ref-3)
4. Dr Ashwini Kumar vs Union Of India, Ministry Of Home, MA No. 2560 of 2018 in WP (C) No.738 of 2016 <https://indiankanoon.org/doc/19090773/> (Last accessed on July 05, 2020).

“In the aforesaid premises, it is therefore respectfully prayed that since no action has been taken by the Government pursuant to the statement of the Hon’ble Attorney General, the stand taken by the National Human Rights Commission and the Law Commission of India in its report of October 2017 and because the merit of the prayer is virtually admitted and conceded before this Hon’ble Court, the National Human Rights Commission, the Law Commission of India and by Select Committee of Parliament, as an integral constituent of the right to life with dignity under Article 21, this Hon’ble Court may be pleased to direct the Central Government to enact a suitable stand-alone, comprehensive legislation against custodial torture as it has directed in the case of mob violence/lynching vide its judgment 17th July 2018.” [↑](#footnote-ref-4)
5. *Id.* Para. 29.

“It is only in exceptional cases where there is a vacuum and non-existing position that the judiciary, in exercise of its constitutional power, steps in and provides a solution till the legislature comes forward to perform its role.” [↑](#footnote-ref-5)
6. Prakash Singh vs Union of India, Supreme Court, Writ Petition (civil) 310 of 1996, <https://indiankanoon.org/doc/1090328/> (Last accessed on July 05, 2020). [↑](#footnote-ref-6)
7. Police Reforms in India, ANNEXURE, Directions of the Supreme Court in Prakash Singh vs Union of India <https://www.prsindia.org/policy/discussion-papers/police-reforms-india> (Last accessed on July 05, 2020).

“[…] Implementation: According to a report of the NITI Aayog (2016), of 35 states and UTs (excluding Telangana), State Security Commissions had been set up in all but two states, and Police Establishments Boards in all states.31 The two states in which the State Security Commissions were not set up by August 2016 were Jammu and Kashmir and Odisha. Note that the report also found that the composition and powers of the State Security Commissions and the Police Establishment Boards were at variance with the Supreme Court directions. For example, in states such as Bihar, Gujarat and Punjab, the State Security Commission were dominated by government and police officers. Further, many of these Commissions did not have the power to issue binding recommendations. […]” [↑](#footnote-ref-7)
8. *Supra Note 3* Pg. 173

“According to the NCRB report titled “Crime in India 2018”, 89 cases were registered against police personnel for human rights violation across the country during 2018. Of the 89 cases, four relates to encounter killings, three relates to deaths in custody, one case of illegal detention, three relating to torture/causing hurt/injury, 17 relating to extortion and 61 other cases. Of these, 40 police personnel were arrested but charge sheets were filed against only 26 personnel. However, no conviction was secured at the end of 2018. In addition to human rights violation, the police were routinely involved in various crimes. As per the NCRB report, a total of 5,479 criminal cases were registered against police personnel in the country during 2018 as against 2,005 cases in 2017, reporting an increase. […] In these cases, 918 police personnel were charge-sheeted, while trials were completed against 586 police personnel and only 41 police personnel were eventually convicted.” [↑](#footnote-ref-8)
9. Highest to Lowest - Pre-trial detainees / remand prisoners, International Centre for Prison Studies <https://www.prisonstudies.org/highest-to-lowest/pre-trial-detainees?field_region_taxonomy_tid=All> (Last accessed on July 05, 2020). [↑](#footnote-ref-9)
10. Prison Statistics India–2017 Executive Summary, Prison Statistics India, 2017,Pg. (x), March 04, 2020 <https://ncrb.gov.in/hi/prison-statistics-india-2017>

“1. The total number of prisons at national level has decreased from 1,401 in 2015 to 1,361 in 2017, having decreased by 2.85% during 2015-2017. […]

8. The actual capacity of prisons has increased from 3,66,781 in 2015 to 3,91,574 in 2017 (as on 31st December of each year), having increased by 6.8% during 2015-2017. Number of prisoners lodged in various jails has increased from 4,19,623 in 2015 to 4,50,696 in 2017 (as on 31st December of each year), having increased by 7.4% during the period. […]” [↑](#footnote-ref-10)
11. *Supra Note 3*, Pg. 122

“According to the National Human Rights Commission, 1,606 cases of deaths in judicial custody were

registered across the country in 2019. These included 201 deaths in the month of January, 104 deaths in February, 115 deaths in March, 136 deaths in April, 160 deaths in May, 133 deaths in June, 140 deaths in July, 155 deaths in August, 101 deaths in September, 135 deaths in October, 136 deaths in November and 130 deaths in December.

As per the latest ‘Prison Statistics Report-2018 of the NCRB, 1,845 prisoners had died across the country’s jails in 2018. These included 1,639 natural deaths and 149 un-natural deaths and 57 deaths in which cause of death were unknown. As per the report, out of the 149 un-natural deaths, 129 prisoners committed suicides, 10 prisoners died due to attack by fellow prisoners, while no prisoners died due to excess/negligence by jail officials.” [↑](#footnote-ref-11)
12. *Supra Note 3,* Pg. 171

“In its latest report “Crime in India - 2018”, the National Crime Records Bureau stated that out of the 70 deaths in police custody reported across the country during 2018 only in three cases nine police personnel were arrested, but none of them were charge sheeted or convicted at the year’s end. Similarly, in cases of “torture/causing hurt/injury”, in three cases, one police personnel were arrested and charge sheeted but not a single perpetrator was convicted during 2018.

The NCRB under the Ministry of Home Affairs, Government of India in its Crime in India reports from 2005 to 2018 revealed that with respect to 500 cases of “death or disappearance of persons remanded to police custody by court”, 281 cases were registered, 54 policemen were charge sheeted but not a single policeman was convicted as on date” [↑](#footnote-ref-12)
13. CHRI PETITIONS NHRC TO INVESTIGATE 15 DEATHS FOLLOWING ALLEGED POLICE EXCESSES DURING COVID-19 LOCKDOWN, Commonwealth Human Rights Initiative, May 20, 2020 <https://www.humanrightsinitiative.org/publication/chri-petitions-nhrc-to-investigate-15-deaths-following-alleged-police-excesses-during-covid19-lockdown> (Last accessed on 05, 2020). [↑](#footnote-ref-13)
14. Police probe torture of two Dalit youths in custody after NGO Report, Yeshika Budhwar, Times of India, February 26, 2019 <https://timesofindia.indiatimes.com/city/jaipur/police-probe-torture-of-2-dalit-youths-in-custody-after-ngo-report/articleshow/68159675.cms> (Last accessed on July 05, 2020). [↑](#footnote-ref-14)
15. International Bridges to Justice, Country Program, India <https://www.ibj.org/programs/country-programs/india-2/> [↑](#footnote-ref-15)
16. The Legal Services Authorities Act, 1987, National Legal Services Authority, <https://nalsa.gov.in/acts-rules/the-legal-services-authorities-act-1987> (Last accessed on July 05, 2020). [↑](#footnote-ref-16)
17. International Covenant on Economic, Social and Cultural Rights, India April 10, 1979 (accession) <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=_en#EndDec> (Last accessed on July 05, 2020).

"I. With reference to article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, the Government of the Republic of India declares that the words `the right of self-determination' appearing in [this article] apply only to the peoples under foreign domination and that these words do not apply to sovereign independent States or to a section of a people or nation--which is the essence of national integrity. […]” [↑](#footnote-ref-17)
18. INTERNATIONAL COURT OF JUSTICE, LEGAL CONSEQUENCES OF THE SEPARATION OF THE CHAGOS ARCHIPELAGO FROM MAURITIUS IN 1965, (REQUEST FOR AN ADVISORY OPINION), WRITTEN STATEMENT OF THE KINGDOM OF THE NETHERLANDS, International Court of Justice, February 27, 2018, International Court of Justice, Pg. 3, Para. 2.3 <https://www.icj-cij.org/files/case-related/169/169-20180227-WRI-01-00-EN.pdf>.

“The right of self-determination is a right that was of crucial importance to the decolonization of dependent territories and peoples. However, from the outset it must be observed that decolonization was only one particular manifestation of the exercise and implementation of this right. As observed by Judge Kreća in his dissenting opinion in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro):

“[t]he fact that in the Court’s practice [...], the right to [...] self-determination has been linked to non-self-governing territories cannot be interpreted as a limitation of the scope of the right to self-determination *rationae personae*, but as an application of universal law *ad casum*.” (ICJ Reports 1996, p. 595, at para. 72).” […]”. [↑](#footnote-ref-18)
19. International Round Table Meet of NHRIs on Ways and Means to Implement Economic, Social and Cultural Rights, National Human Rights Commission India <https://nhrc.nic.in/press-release/international-round-table-meet-nhris-ways-and-means-implement-economic-social-and-0> (Last accessed on 06 July, 2020)

“Three days of discussions on ways and means to Implement Economic, Social and Cultural Rights at the International Round Table jointly organized by the National Human Rights Commission of India and the Office of the United Nations High Commissioner for Human Rights in New Delhi has resulted in the adoption of the New Delhi Concluding Statement on 1 December 2005.

The New Delhi Concluding Statement called on States to respect and ensure that National Human Rights Institutions (NHRIs) are established in accordance with the Paris Principles adopted by the UN General Assembly on 20 December 1993. It also called on their institutions to be adequately resourced to enable them to deal with Economic, Social and Cultural Rights (ESCR).

It reaffirmed that all human rights being universal, indivisible and interdependent, National Institutions should adopt a comprehensive approach to the promotion and protection of human rights, which includes ESCR. […]” [↑](#footnote-ref-19)
20. Principles relating to the Status of National Institutions (The Paris Principles), Adopted by General Assembly resolution 48/134 of 20 December 1993 <https://www.ohchr.org/en/professionalinterest/pages/statusofnationalinstitutions.aspx> (Last accessed on 06 July, 2020).

“1. A national institution shall be vested with competence to promote and protect human rights. 2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.” [↑](#footnote-ref-20)
21. The Protection of Human Rights Act, 1993 <https://nhrc.nic.in/sites/default/files/PHRA_Bilingual_2018.pdf> (Last accessed on 06 July, 2020). [↑](#footnote-ref-21)
22. Seventh Schedule, Article 246, Constitution of India <https://www.mea.gov.in/Images/pdf1/S7.pdf> (Last accessed on 06 July, 2020)- List II- STATE LIST and List-III CONCURRENT LIST. [↑](#footnote-ref-22)
23. Defunct, ineffective, non-existent: Status of State Human Rights Commission in India, Rekha Dixit, The Week, December 10, 2019 <https://www.theweek.in/news/india/2019/12/10/defunct-ineffective-non-existent-status-of-state-human-rights-commission-in-india.html> (Last accessed on 06 July, 2020). [↑](#footnote-ref-23)
24. Protection of Human Rights in India, Working of NHRC/SHRC (1193-018), Transparency International India, Statistical Annex, Pg.09 <http://transparencyindia.org/wp-content/uploads/2019/12/Protection-of-Human-R%E2%81%ACights-in-India-as-on-9th-Dec-2019.pdf> (Last accessed on 06 July, 2020). [↑](#footnote-ref-24)
25. *Id.* Pg.12. [↑](#footnote-ref-25)
26. *Supra Note 21,* Section 18- Steps during and after inquiry. [↑](#footnote-ref-26)
27. *Supra Note 21,* Section 32- Grants by the Central Government and Section 33- Grants by the State Government. [↑](#footnote-ref-27)
28. Labour reforms: No one knows the size of India's informal workforce, not even the govt, Prasanna Mohanty, Business Today, July 15, 2019 <https://www.businesstoday.in/sectors/jobs/labour-law-reforms-no-one-knows-actual-size-india-informal-workforce-not-even-govt/story/364361.html> (Last accessed on 06 July, 2020).

“The Economic Survey of 2018-19, released on July 4, 2019, says "almost 93%" of the total workforce is 'informal'. But the Niti Aayog's Strategy for New India at 75, released in November 2018, said: "by some estimates, India's informal sector employs approximately 85% of all workers”

What is the source of such information? The Economic Survey of 2018-19 does not mention it. The Niti Aayog does and cites a 2014 report, 'OECD India Policy Brief: Education and Skills', which, in turn is silent on its source of information.

There is yet another government report, 'Report of the Committee on Unorganised Sector Statistics' of the National Statistical Commission (NSC), 2012, which says the share of the informal workforce is "more than 90%" of the total. Again, there is no mention of the source. […]” [↑](#footnote-ref-28)
29. THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2019, Bill No. 186 of 2019 <https://www.prsindia.org/sites/default/files/bill_files/Occupational%20Safety%2C%20Health%20and%20Working%20Conditions%20Code%2C%202019.pdf> (Last accessed on 06 July, 2020). [↑](#footnote-ref-29)
30. National Human Rights Commission, Order Dt. May 15, 2018 <https://nhrc.nic.in/sites/default/files/Documents_core_froup_ngo_hrd.pdf> (Last accessed on 06 July, 2020). [↑](#footnote-ref-30)
31. Report of the Proceedings, International Round Table on National Institutions Implementing Economic, Social and Cultural Rights, 29 November - 01 December 2005 New Delhi, India <https://nhrc.nic.in/sites/default/files/misc_ESCR.pdf> (Last accessed on 06 July, 2020). [↑](#footnote-ref-31)
32. Occupational Health and Safety Association vs. Union of India and others, WRIT PETITION (CIVIL) NO.79 OF 2005 <https://indiankanoon.org/doc/180334598/> (Last accessed on 06 July, 2020). [↑](#footnote-ref-32)
33. Legislative Brief The Constitution (One Hundred and Eighth Amendment) Bill, 2008, September 23, 2008 <https://www.prsindia.org/uploads/media/Constitution%20Eighth/bill184_20080923184_Legislative_Brief____Womens_reservation_Bill_final.pdf> (Last accessed on June 29, 2020). [↑](#footnote-ref-33)
34. “Women in Politics:2019”, UN Women and Inter-Parliamentary Union, January 1, 2019 <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2019/women-in-politics-2019-map-en.pdf?la=en&vs=3303> (Last accessed on June 29, 2020)

WOMEN IN PARLIAMENT

RANK- 149 INDIA Lower or Single House- 66/524 seats (12.6%) Upper House or Senate- 28/244 (11.5%)

WOMEN IN MINISTERIAL POSITIONS

RANK- 78 INDIA Women-6 (23.1%) Total Ministers-26 [↑](#footnote-ref-34)
35. Sexism, harassment and violence against women parliamentarians, Inter-Parliamentary Union, Issue Briefs 2016 <https://www.ipu.org/resources/publications/issue-briefs/2016-10/sexism-harassment-and-violence-against-women-parliamentarians> (Last accessed on 30 June 2020).

81.8% Experienced psychological violence; 44.4% Received threats of death, rape, beatings or kidnapping; 25.5% Experienced physical violence in the parliament; 21.2% Of parliaments surveyed have a sexual harassment policy; 38.7% Women MPs said Violence against Women in Politics undermined both their mandate implementation and freedom of expression; 46.7% Feared for their security and that of their family. [↑](#footnote-ref-35)
36. Statistics on rape in India and some well-known cases, December 6, 2019 <https://www.reuters.com/article/us-india-rape-factbox/statistics-on-rape-in-india-and-some-well-known-cases-idUSKBN1YA0UV> (Last accessed on June 29, 2020). [↑](#footnote-ref-36)
37. In the said case, 6 people were held liable, of which 1 committed suicide within a matter of days from getting convicted. A second was found to be a juvenile and was sent to the juvenile correction home. The remaining 4 were sentenced for death penalty. The sentence was executed after a delay of almost 7 years, as the accused were exhausting the available remedies of appeal and mercy petition up until the last day.

Timeline of the Case: <https://www.indiatoday.in/india/story/nirbhaya-case-from-december-16-2012-to-march-20-2020-a-timeline-1657663-2020-03-20> (Last accessed on June 30, 2020).

Vinay Sharma vs. Union of India, WRIT PETITION (CRL.) NO.65 OF 2020 <https://main.sci.gov.in/supremecourt/2020/5529/5529_2020_5_301_20686_Judgement_14-Feb-2020.pdf> (Last accessed on June 30, 2020).

Mukesh Kumar vs. Union of India, WRIT PETITION (CRIMINAL) D NO.3334 OF 2020 <https://main.sci.gov.in/supremecourt/2020/3334/3334_2020_5_301_20151_Judgement_29-Jan-2020.pdf> (Last accessed on June 30, 2020). [↑](#footnote-ref-37)
38. NO MORE “TALAQ TALAQ TALAQ” Muslim Women Call for a Ban on an UnIslamic Practice, Dr. Noorjehan Safia Niaz and Zakia Soman, November 21, 2015

<https://bmmaindia.com/2015/11/21/bmma-publications-no-more-talaq-talaq-talaq-muslim-women-call-for-a-ban-on-an-unislamic-practice/> (Last accessed on June 30, 2020). [↑](#footnote-ref-38)
39. Shayara Bano Vs. Union of India, Writ Petition (C) No. 118 of 2016 <https://indiankanoon.org/doc/115701246/> (Last accessed on 30 June 2020). [↑](#footnote-ref-39)
40. THE VALIDITY OF RESERVATIONS AND DECLARATIONS TO CEDAW: The Indian experience, International Women’s Rights Action Watch Asia Pacific, IWRAW Asia Pacific Occasional Papers Series No.5, 2005, Pg- 12.

“Declaration 1: With regard to articles 5(a) and 16(1) of the Convention on the Elimination of All Discrimination Against Women, the Government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent.”

<https://www.iwraw-ap.org/resources/the-validity-of-reservations-and-declarations-to-cedaw-the-indian-experience/?_sft_resource_region=india> (Last accessed on 30 June 2020). [↑](#footnote-ref-40)
41. How aware are you about the Women in Indian politics?, Association for Democratic Reforms, July 4, 2019 <https://adrindia.org/content/how-aware-are-you-about-women-indian-politics> (Last accessed on 30 June 2020). [↑](#footnote-ref-41)
42. Lok Sabha Elections 2019, January 8, 2020 <https://adrindia.org/content/lok-sabha-elections-2019> (Last accessed on 30 June 2020). [↑](#footnote-ref-42)
43. Nirbhaya Fund, Ministry of Women and Child Development, Government of India, Press Information Bureau, July 19, 2019 <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1579539> (Last accessed on 30 June 2020). [↑](#footnote-ref-43)
44. Nirbhaya Fund utilisation shows why women continue to be unsafe in India, India Today, December 5, 2019 <https://www.indiatoday.in/news-analysis/story/nirbhaya-fund-utilisation-shows-why-women-continue-to-be-unsafe-in-india-1625407-2019-12-05> (Last accessed on 30 June 2020). [↑](#footnote-ref-44)
45. Convention on the Rights of the Child <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> (Last accessed on July 01 2020).

Article 1- For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. [↑](#footnote-ref-45)
46. FACT SHEET: Child labour in India, An overview of the situation in India regarding working children in India, International Labour Organisation, June 8, 2017 <https://www.ilo.org/newdelhi/whatwedo/publications/WCMS_557089/lang--en/index.htm> (Last accessed on July 01, 2020);

About Child Labour, Ministry of Labour and Employment, Government of India

<https://labour.gov.in/childlabour/about-child-labour#:~:text=According%20to%20the%20Census%202001,is%20estimated%20at%2090.75%20lakh.(Last> accessed on July 01, 2020).

“According to the Census 2001 figures there are 1.26 crore working children [*sic*] in the age group of 5-14 as compared to the total child population of 25.2 crore. As per survey conducted by National Sample Survey Organisation (NSSO) in 2004-05, the number of working children [*sic*] is estimated at 90.75 lakh. As per Census 2011, the number of working children in the age group of 5-14 years has further reduced to 43.53 lakh.” [↑](#footnote-ref-46)
47. STATE OF CHILD WORKERS IN INDIA, Mapping Trends, V.V. Giri National Labour Institute and UNICEF <https://vvgnli.gov.in/sites/default/files/State%20of%20Child%20Workers%20in%20India-Mapping%20Trends.pdf> (Last accessed on July 01, 2020)

“…An analysis of child workers by duration of work is understood by the status of child workers as ‘main’ and ‘marginal’ workers as classified by Census of India. Main workers are those who work for 6 months or more in the preceding one year and marginal workers are those working for lesser than 6 months.…It was found that out of 10.1 million workers in the age group of 5–14 years, 4.4 million (42.6 per cent) were main workers in 2011 while 5.8 million were marginal workers that included 3.5 million students and 2.3 million others.8 Therefore, 6.7 million children involved in some form of economic activity alone were either main workers or non-students. It is disturbing to note that the proportion of marginal workers who were students had increased from 2.5 million in 2001 to 3.5 million in 2011. While 36.2 per cent of the marginal workers were students in 2001, the same figure stood at 60.3 per cent in 2011” [↑](#footnote-ref-47)
48. Sustainable Development Goals <https://www.unodc.org/southeastasiaandpacific/en/sustainable-development-goals.html#:~:text=Target%208.7%20%2D%20Take%20immediate%20and,labour%20in%20all%20its%20forms.>(Last accessed on July 01, 2020)

8. Decent Work and Economic Growth: Target 8.7- Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms. [↑](#footnote-ref-48)
49. Convention 138- Minimum Age Convention 1973, 1999 <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312283:NO> (Last accessed on July 01, 2020). [↑](#footnote-ref-49)
50. Convention 182- Worst Forms of Child Labour Convention, 1999 <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:::NO:12100:P12100_ILO_CODE:C182:NO> (Last accessed on July 01, 2020). [↑](#footnote-ref-50)
51. The Child Labour (Prohibition and Regulation) Amendment Act, 2016 Ministry of Law and Justice, The Gazette of India, July 30, 2016 <https://labour.gov.in/sites/default/files/THE%20CHILD%20LABOUR%20%28PROHIBITION%20AND%20REGULATION%29%20AMENDMENT%20ACT%2C%202016_1.pdf> (Last accessed on July 01, 2020). [↑](#footnote-ref-51)
52. *Id.* 2. Amendment of the long title- “An Act to prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto.”

4. Amendment of Section 2- (a)…(i) “adolescent” means a person who has completed his fourteenth year of age but has not completed his eighteenth year;’;

(b)…‘(ii) “child” means a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is more;’ [↑](#footnote-ref-52)
53. The Right of Children to Free and Compulsory Education Act 2009, Ministry of Law and Justice, The Gazette of India, August 26, 2009 <https://mhrd.gov.in/sites/upload_files/mhrd/files/upload_document/rte.pdf> (Last accessed on July 03, 2020) [↑](#footnote-ref-53)
54. Mid-Day Meal Scheme, Department of School Education & Literacy, Ministry of Human Resource Development, Government of India, <https://mhrd.gov.in/mid-day-meal> (Last accessed on July 03, 2020). [↑](#footnote-ref-54)
55. National Crime Record Bureau, Ministry of Home Affairs, Ref. No. 24013/5/2011-ATC, June 3, 2019 <https://ncrb.gov.in/sites/default/files/missingpage-merged.pdf> (Last accessed on 3 July 2020).

Pg. 13, II. Missing Children in India

“…During the year 2016 a total of 63,407 children, during 2017, 63,349 children, and during 2018 a total of 67,134 children have been reported as missing.” [↑](#footnote-ref-55)
56. The Protection of Children from Sexual Offences Act, The Gazette of India, Ministry of Law and Justice, June 19, 2012 <https://wcd.nic.in/sites/default/files/POCSO%20Act%2C%202012.pdf> (Last accessed on July 03, 2020)

(…) 2. Definition- (1)…(d) “child” means any person below the age of eighteen years (…)

(…) 3. Penetrative Sexual Assault- A person is said to commit "penetrative sexual assault" if--

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

(…) 7. Sexual Assault- Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault (…)

(…) 11. Sexual Harassment- A person is said to commit sexual harassment upon a child when such person with sexual intent,-- (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or (iii) shows any object to a child in any form or media for pornographic purposes; or (iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or (v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or (vi) entices a child for pornographic purposes or gives gratification therefor.

Explanation.--Any question which involves '[sexual intent" shall be a question of fact. [↑](#footnote-ref-56)
57. *Id.* 28. Special Courts- (1) For the purposes of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, designate for each district, a Court of Session to be a Special Court to try the offences under the Act:

Provided that if a Court of Session is notified as a children's court under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court designated for similar purposes under any other law for the time being in force, then, such court shall be deemed to be a Special Court under this section. (…) [↑](#footnote-ref-57)
58. POCSO convictions: Time to plug gaps, Hanif Qureshi And R. Rochin Chandra, The Telegraph Online, March 03, 2020 [https://www.telegraphindia.com/opinion/pocso-convictions-time-to-plug-gaps/cid/1750991 (Last](https://www.telegraphindia.com/opinion/pocso-convictions-time-to-plug-gaps/cid/1750991%20%28Last) accessed on 03 July. 2020).

“(…) The data also reveal that despite an increase in child rape, the conviction rate was as low as 28 per cent at the end of 2016.(…)” [↑](#footnote-ref-58)
59. Over 2.4 lakh cases relating to rape and POCSO pending in courts across country, says government, India Today, March 05, 2020 <https://www.indiatoday.in/india/story/over-2-4-lakh-cases-relating-to-rape-and-pocso-pending-in-courts-across-country-says-government-1652567-2020-03-05> (Last accessed on 03 July. 2020). [↑](#footnote-ref-59)
60. Crime in India 2018, Statistics Vol. I, National Crime Records Bureau, Ministry of Home Affairs <https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%201.pdf> (Last accessed on July 03, 2020). [↑](#footnote-ref-60)
61. THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015, The Gazette of India, Ministry of Law and Justice, December 31, 2015 <http://cara.nic.in/PDF/JJ%20act%202015.pdf> (Last accessed on July 03, 2020).

(…) 2. Definition- (…) (14) “child in need of care and protection” means a child— (…)

(vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; (…). [↑](#footnote-ref-61)
62. Juvenile Justice (Care and Protection of Children) Model Rules, 2016, The Gazette of India, Ministry of Law and Justice, September 21, 2016 <http://cara.nic.in/PDF/english%20model%20rule.pdf> (Last accessed on July 03, 2020).

(…) 92. Inquiry in case of a Missing Child.- (1) A missing child is a child, whose whereabouts are not known to the parents, legal guardian or any other person or institution legally entrusted with the custody of the child, whatever may be the circumstances or causes of disappearance, and shall be considered missing and in need of care and protection until located or his safety and well-being established. (…) (7) The Central Government or the State Government may develop appropriate Standard Operating Procedures for the manner of inquiry in cases of missing children to give effect to these rules. [↑](#footnote-ref-62)
63. Writ Petition (Civil) Bo.75/2012, Supreme Court of India <https://bba.org.in/wp-content/uploads/2020/04/bba-vs-uoi-sc-wp-crl-75-of-2012.pdf> [↑](#footnote-ref-63)
64. Nobel Laureate Kailash Satyarthi Pitches for National Children's Tribunal For Speedy Justice, April 08, 2018 <https://www.ndtv.com/india-news/nobel-laureate-kailash-satyarthi-pitches-for-national-childrens-tribunal-1834489> (Last accessed on July 03, 2020). [↑](#footnote-ref-64)
65. Ministry of Women and Child Development, Child Welfare II, Government of India, Office Memorandum, December 20, 2015 <https://ncpcr.gov.in/show_img.php?fid=1760> (Last accessed on July 03, 2020). [↑](#footnote-ref-65)
66. THE INTEGRATED CHILD PROTECTION SCHEME (ICPS), A Centrally Sponsored Scheme of Government – Civil Society Partnership, Ministry of Women & Child Development, Government of India, March 03, 2014 <https://cdn.s3waas.gov.in/s3e56954b4f6347e897f954495eab16a88/uploads/2018/02/2018022817.pdf> (Last accessed on July 03, 2020). [↑](#footnote-ref-66)
67. National Commission for Protection of Child Rights <https://www.ncpcr.gov.in/>. [↑](#footnote-ref-67)
68. IN RE: ALARMING RISE IN THE NUMBER OF REPORTED CHILD RAPE INCIDENTS, Writ Petition (Criminal) No.01/2019 dated 25.07.2019 <https://indiankanoon.org/doc/183346552/> (Last accessed on July 03, 2020). [↑](#footnote-ref-68)
69. Press Information Bureau, Ministry of Law & Justice, Government of India, January 09, 2020 <https://pib.gov.in/newsite/PrintRelease.aspx?relid=197340> (Last accessed on July 03, 2020). [↑](#footnote-ref-69)