Examining The Legal Landscape for Street Involved Children and Youth:

India 2015

By Pro Bono Volunteers From

Baker & McKenzie

and

Accenture

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A Legal Analysis of the Issues Facing Street Youth

Note: At the time of writing (15 May 2015), the Juvenile Justice (Care and Protection of Children) Bill 2014 passed the Lok Sabha (lower house) on 7 May 2014, and is currently pending before the Rayja Sabha (upper house). All the major parties in the lower house voted in favour of the Bill.

This Bill is relevant to large parts of this paper, especially in relation to child welfare and criminal justice. Its status as a bill, and whether or not at the time of reading it has passed into law in its current form, should be checked before relying on any of this paper’s description of the reforms.

A. Human Rights in India

1. Introduction

1.1 Human rights are preserved and enforced through international and domestic law. However, in many instances, basic human rights for street youth in India (the largest population of street youth in the world) are overlooked.

1.2 Many of these children lack access to basic necessities, including health care and education. Their lack of identity in Indian society, for reasons ranging from a loss of identification documents to familial abandonment to their status in the Caste hierarchy, puts them at ongoing risk of abuse and exploitation.

1.3 In this chapter we will examine the availability of, and access to, human rights for street youth in India as well as the government and non-governmental organisation (“NGO”) programs designed to assist street youth in attaining their basic human rights.

2. Overview of human rights in India

International conventions

2.1 Human rights are enforced in India through a mixture of international conventions and domestic law. India’s constitution (the “Constitution”) enshrines many human rights doctrines. The key international conventions that have been ratified by India that relate to street youth are as follows:

(a) Universal Declaration of Human Rights (1948): This declaration, drafted after the Second World War, sets out the basic civil, political, economic, social and cultural rights that all human beings should enjoy. It is widely accepted as the fundamental norms of human rights that everyone should respect and protect. The UDHR, together with the International Covenant on Civil and Political Rights and its two Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights (see below), form the so-called International Bill of Human Rights. While not a treaty itself, the UDHR was explicitly adopted for the purpose of defining the meaning of the words “fundamental freedoms” and “human rights” appearing in the United Nations (“UN”) Charter, which is binding on all Member States, including India.

(b) Covenant on Civil and Political rights (1966): This treaty details the basic civil and political rights of individuals and nations including the right to own, trade, and dispose of their property freely, the right to life, liberty, freedom and movement, equality before the law and freedom of association, and the presumption of innocence until proven guilty. This convention was ratified by India on 10 April 1979.

(c) Covenant on Economic, Social and Cultural rights (1966): This treaty, ratified by India on 10 April 1979, describes the basic economic, social, and cultural rights of individuals and nations, including the right to free education and minimum wages. The Covenant also prohibits the exploitation of children, and expressly states that special measures of protection and assistance should be taken on behalf of children and the protection should cover both economic and social exploitation. The Covenant states that children should be protected from working in harmful conditions.


2 The Caste system is a type of social classification in India that is typified by social inequality. A Caste is a certain group of people. Ones membership with a Caste is determined by a range of factors, including birth and occupation. The concept of a Caste system is vast and stretches to networks and regions nationwide. Despite such Caste systems being forbidden by India’s constitution by promising equality of status and opportunity, many Hindu Indians believe that such a system is a reflection of natural order and thus believe that social classification is an acceptable practice.


environments including those situations that are seen to be harmful to their morals, health, or are likely to hamper their normal development.\(^5\)

(d) Convention on the Rights of the Child ("CRC") (1989): This treaty sets out the civil, political, economic, social, health and cultural rights of children. The Convention defines a child as any person under the age of 18, unless the age of majority is attained earlier under a state’s own domestic legislation. This convention was ratified by India on 11 December 1992. \(^6\)

2.2 In ratifying these international treaties, India has undertaken to put in place domestic measures and legislation compatible with its treaty obligations and duties. Where domestic legal proceedings fail to address human rights abuses, International aid has attempted to create a platform for individual complaints or communications to be available at the regional and international levels to help ensure that international human rights standards are in fact respected, implemented and enforced.

**India’s constitutional rights**

2.3 The Constitution contains both fundamental rights and principles aimed at protecting human rights in India. The judicially enforceable fundamental rights which encompass all civil and political rights are enshrined in part III of the Constitution. \(^7\) These include the rights to equality, freedom, and education and protection against exploitation. The key difference between fundamental rights and directive principles is that fundamental rights cannot be violated by a law passed by government. Any law that is inconsistent with a fundamental right is void. Some fundamental rights are only available to citizens\(^8\) while others relate to all persons in India (including non-citizens). \(^9\) Access to rights for migrants in India will be looked at later in this paper.

2.4 The Constitution contains many fundamental rights and directive principles that, theoretically, protect the human rights of street youth. However, as will be explored further in this chapter, compliance with these principles is often overlooked as street youth are denied access to basic human rights, including health care, education and security of person.

2.5 Article 24 of the Constitution states that no child below the age of 14 years shall be employed to work in a factory or mine, or engaged in any other hazardous employment. Article 21A requires the State to provide free and compulsory education to all children aged 6 to 14 years in such manner as the State may, by law, determine. \(^10\) Each of these principles is considered a fundamental right.

2.6 The Constitution also includes directive principles aimed at protecting the rights of people in India, such as street youth. Article 45 requires that the State shall endeavour to provide early childhood care and education to children below the age of 6 years. \(^11\) Further, Article 39(e) and (f) provide that the State shall, in particular, direct its policy towards ensuring that:

(a) the health and strength of workers, men and women and children are not abused;

(b) citizens are not forced by economic necessity to enter vocations unsuited to their age or strength;

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\(^7\) Articles 12 to 35

\(^8\) These include the right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights, right to property and right to constitutional remedies. However, the right to property was removed from Part III of the Constitution by the 44th Amendment in 1978.

\(^9\) These include a right to life and to live with dignity, equality before the law however it does not include the fundamental rights set out in Article 19 of the Constitution.

\(^10\) The Constitution (86th Amendment) Act was notified on 13th December 2002, making free and compulsory education a Fundamental Right for all children in the age group of 6-14 years.

\(^11\) Article 45, The Constitution (86th Amendment) Act, 2002, s.3.
(c) children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity; and

(d) children and youth are protected against exploitation and against moral and material abandonment.

2.7 Despite these protections, India’s street youth lack access to the basic human rights enshrined in its Constitution.

**Human rights institutions**

2.8 To encourage compliance with human rights, India established several governing bodies. These operate on a national, state and regional basis. Whilst the national and state governing bodies play a key role in enforcing human rights generally, it is often the regional programs that have the greater impact on street youth, due to their lack of access to broader national services. These programs are discussed further below.

2.9 On a national basis, The Protection of Human Rights Act 1993 was enacted to provide a framework for human rights recognition in India. In particular, the act provides for the formation of key bodies to enforce constitutional human rights. These include the National Human Rights Commission, various State Human Rights Commissions, and Human Rights Courts.

2.10 The National Commission for Protection of Child Rights (“NCPCR”) was set up in March 2007 under the Commission for Protection of Child Rights Act 2005 to ensure that all laws and other policies and programs are consistent with the with the rights of the child enshrined in the Constitution and also the UN CRC.

**3. Access to human rights for street youth**

**Lack of identity documentation**

3.1 In many instances, street youth are not able to obtain access to the institutions established to ensure compliance with human rights. This includes access to education, medical treatment, and shelter. In part, this is because street youth generally do not have the necessary identification documentation required by these facilities. However, obtaining identification documents is a difficult process for a child who does not have a fixed residential address, if any, and is not otherwise able to meet the criteria to obtain the documents.

“A lack of identity has become the divide in India, denying needy Indians access to welfare programmes.”

– Mr Ashok Dalwai, deputy general of Unique Identification Authority of India (‘UIDAI’).\(^{12}\)

3.2 The Registration of Births and Deaths Act 1969 establishes Indian state government procedures for birth registration. However, notwithstanding that births are required to be registered under Indian law and that this is recognised as a basic human right pursuant to Article 7 of the CRC, UNICEF estimates that just 58% of all births in India are registered each year. The consequences for children lacking citizenship or registration in India include not being able to access public services, enrol in school, or obtain identification documents later in life.\(^{13}\)

3.3 These street children are overlooked by society and, in extreme cases, dehumanized in blatant violation of their fundamental human rights. Street youth without identification documents in particular have been reported to face unrecorded police brutality, including shootings, chain whippings, and sexual violence.

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\(^{13}\) India Human Rights Report 2013 extract
Others have been forcibly removed from the streets by police officers in round-ups and taken to youth detention centres that fail to meet international human rights standards.

3.4 In order to feed themselves without access to the above services, many children will work in unsafe and exploitative environments that expose them to the dangers of child labour, sex slavery, and human trafficking. These issues are considered in more detail later in this report. Due to a lack of official identity, these street children are susceptible to abduction because there is no proof of the child’s existence prior to their disappearance.  

**Discrimination based on wealth, religion, location**

3.5 Street children are often viewed in terms of ‘victimization’ or ‘delinquency’. The effect of this stigma is to reinforce the marginalization of street youth. It is reported that society in India often regards street youth as nothing but disobedient and deviant. As a result, they face harassment from other members of society and law enforcement agencies. Over time, street children run the risk of becoming desensitized to their environment and may elect to remain on the streets. Without external support, many will grow up to become homeless adults trapped in poverty, violence and addiction.

3.6 Street youth are often discriminated on the basis of wealth, religion, location and gender. In Indian society, females are often discriminated against, while males are regarded with higher importance, and are therefore afforded better education than females. With fewer opportunities for education, and even slimmer prospects of employment, young females turn to prostitution for money instead.

3.7 Similarly, children affected by HIV/AIDS face significant barriers to attending school. Discrimination by teachers and principals isolates these children and, in extreme cases, children with HIV/AIDS or other diseases are often separated from healthy children and sometimes denied admission entirely, according to Human Rights Watch. Legislation and government action on a national level is nonexistent, and little effort has been made to implement policies combating discrimination against children living with HIV/AIDS.

3.8 A 2003 interview conducted by Human Rights Watch told the story of Sharmila, a ten year old girl, who lived with her eighty-five year old grandmother because her parents had died from AIDS two years prior. Sharmila and her grandmother came from a low-caste and live alone together; neither was able to work. They lived off of 400 rupees (US$8.30) a month and food provided by a local NGO. Until fourth grade, Sharmila attended a church-run school in which she was segregated from the other children because of her exposure to the disease. In 2003, Sharmila became sick with tuberculosis. Although the NGO paid for antibiotics, vitamins, medicine and transportation, she was not provided antiretroviral therapy. Sharmila died in January 2004. This example demonstrates the discrimination faced by people exposed to serious diseases and the lack of access to basic human rights, in that case leading to death.

3.9 Little to no action has been taken at the national level to prevent or address such discrimination, although some high level officials in the Ministry of Health acknowledge that discrimination against children living with HIV/AIDS is a problem. Government policy is stagnant, and programs to train teachers and doctors, educate school children, and increase public knowledge of serious diseases are moving slowly. Such programs require vast expansion and improvement if there is to be any significant impact on the lives of children living with HIV/AIDS.

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14 [http://www.thestreetchildproject.org/causes-effects/](http://www.thestreetchildproject.org/causes-effects/)
16 Human Rights Watch interview with Sharmila A., her grandmother, and staff of a local NGO, Ariyalar district, Tamil Nadu, November 15, 2003.
17 Human Rights Watch interview with Sharmila A., her grandmother, and staff of a local NGO, Ariyalar district, Tamil Nadu, November 15, 2003.
Indian youth may suffer discrimination based on their ethnicity. For example, a recent report by Human Rights Watch entitled, “They Say We’re Dirty” examines discrimination against Dalit, tribal and Muslim children and notes that the lack of accountability and internal controls prevent the Right of Children to Free and Compulsory Education Act 2009 from being enforced.

The central government recognizes discrimination based on factors such as a child’s caste, class, gender, and special needs, however, education officials are often hesitant to admit the existence of such segregation. According to government statistics, the dropout rate amongst adolescent girls is as high as 64%. These girls are vulnerable to child marriage and are often forcefully taken out of school by their parents. School officials do little to prevent such action by parents. Moreover, the weak implementation of education policies is pushing children into India’s labour markets. Children from poor, landless and marginalized communities are taken out of school and forced to work.

The Right of Children to Free and Compulsory Education Act lacks a clear and effective grievance redress mechanism. The National Advisory Council’s Working Committee on Right to Education (“RTE”) acknowledges the lack of operational monitoring and is pushing for a nationwide grievance redress that, if passed, would be a significant step towards developing effective grievance mechanisms in education.

India’s compliance with human rights

There are, however, some positive examples of implementation of international human rights into Indian domestic legislation and government/community programs.

As identified above, the Constitution imposes on the State a primary responsibility to ensure that all the needs of children are met and that their basic human rights are fully protected. This Act was introduced to provide proper care, protection and treatment by catering to children’s development needs, adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children, and for rehabilitation through various institutions established under this enactment. For example, the right to education in the Constitutional Amendment has incorporated the right to education as a sub-element of the right to life, and has supported the later introduction of legislation to enforce each child’s right to education. In 2012, the Supreme Court upheld the constitutionality of this legislation and ordered elite schools to reserve a 25% admission quota for children from under-privileged communities.

The Protection of Children from Sexual Offences Act 2012 (the “POCSO Act”) was formulated to effectively address the sexual abuse and sexual exploitation of children. The Act cast the police in the role of child protectors during the investigation process, tasking them with a duty to provide urgent arrangements for the care and protection of the child - such as providing emergency medical treatment and placing the child in a shelter home - and bringing the matter in front of the Child Welfare Committee (“CWC”) should the need arise. The POCSO Act also provides for mandatory reporting of sexual offences; failure to do so attracts a 6 month imprisonment and/or a fine. Several NGO’s, such as Arpran, actively assist in the enforcement of this legislation by working to prevent further re-victimization, and to assist children in recovering from the impact of sexual abuse.

Public interest litigation has been used to ensure that the State performs its duty towards children, resulting in the enforcement of the Child Labour (Prohibition and Regulation) Act 1986, the

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21 Human Rights Watch. “They Say We’re Dirty: Denying an Education to India’s Marginalized.” 2014.
strengthening of inadequate laws, and the setting aside of discriminatory laws. Most street youth are unable to access the legal system and claim their constitutional and legal rights by themselves.

4.5 In addition to these legal rights, there have been some positive programs and policies established throughout India to enforce these human rights for street youth. Some key examples are as follows:

(a) The National Policy for Children 2013 addresses key priorities which are the undeniable rights of every child in the areas of survival, health, nutrition, development, education, protection and participation, and the responsibility of ensuring this is enforced in each State;

(b) The National Charter for Children 2004 aims to secure every child’s inherent right to be a child and enjoy a healthy and happy childhood and to raise awareness in the community to protect children from all forms of abuse while strengthening the family, society, and the nation. In particular, this charter aims to assure basic needs and security, promote free and compulsory primary education, and protect children from all forms of economic exploitation and abuse;

(c) The National Commission for Protection of Child Rights was established to ensure that all laws, policies, programmes and administrative mechanisms are consistent with the rights of the child in Constitution and the UN CRC. The Commission promotes these rights through national policies and programmes though to the states, district and local levels;

(d) The National Nutrition Mission aims to provide mid day meals in schools across India; and

(e) Increased implementation of sexual harassment policies through corporates, and setting up committees to raise awareness and address the issue of sexual harassment of women in India.

5. Government/NGO services

5.1 As identified earlier in this paper, access to human rights institutions can be limited for street youth. Often the most effective way for street youth to gain access to basic human rights is through regional initiatives and programs specifically focusing on street youth.

5.2 According to UNICEF, street children fall under two categories: Children ‘on’ the street and ‘of’ the street. Children on the street earn a livelihood from the street, such as street urchins and beggars. They return home at night and have contact with their families. Children of the street are homeless children who live and sleep on the streets in urban areas. They are on their own and do not have any parental supervision or care, though some do live with other homeless adults. The distinction is an important one because children of the street lack the emotional and psychological support of a family.

5.3 Furthermore, children of the street are often highly vulnerable as they are easy victims of abuse and inhumane treatment. They often engage in petty theft or prostitution for economic survival.

5.4 Children run away from their homes for a variety of reasons. Some may have faced traumatic experiences in their homes. Their parents may be abusive or have problems with alcoholism, poverty or unemployment. Some children leave home drawn by the glamour of the big cities.

5.5 The Integrated Programme for Street Children was started as an initiative to help children living on the street gain access to human rights. The program aims to build society’s awareness of the rights of the child enshrined in the UN CRC and in the Juvenile Justice (Care and Protection of Children) Act 2000. This program is targeted at children without homes and family such as children of sex workers and children of homeless persons. The program does not include children who live with families and in slum areas.

(a) State Governments, Union Territory Administrations, Local Bodies, Educational Institutions and Voluntary Organisations are eligible for financial assistance under this program. Up to 90%
of the cost of the project is subsidised by the Government, with the remaining contributions borne by the organization concerned.  

(b) The Programme includes counselling, guidance and referral services, 24 hour ‘drop-in’ shelters and toll-free telephone service, non-formal education, recreation, and reenrollment into schools. It aims to reintegrate children with their families and to place destitute children in foster care homes or hostels and residential schools. The program also focuses on health services, including nutrition, mobilizing preventative health services, reducing the incidence of drug and substance abuse, and the prevention and treatment of HIV/AIDS.

5.6 An array of “schemes” or social programs developed by the Indian Government offer services to street children, from juvenile justice to healthcare. Due to shortcomings in the system and identified gaps, there have been efforts to combine multiple schemes into one unified program called the “Integrated Child Protection Scheme” ("ICPS"). Launched in 1975, the scheme had the following objectives:

(a) raise the health and nutritional level of poor Indian children below 6 years of age;
(b) create a base for proper mental, physical and social development of children in India;
(c) reduce instances of mortality, malnutrition and school dropouts among Indian children;
(d) coordinate activities of policy formulation and implementation among all departments of various ministries involved in the different government programs and schemes aimed at child development across India;
(e) provide health and nutritional information and education to mothers of young children to enhance child rearing capabilities of mothers in the country of India; and
(f) provide nutritional food to the mothers of young children and also at the time of pregnancy period.

5.7 UNICEF, the World Health Organisation (“WHO”) and the World Bank have all participated in this program by providing supplies and organizational support. Studies conducted by Indian states show improvements in mental and social development as well as nutritional health.

5.8 NGOs are also widely present in India and offer a range of social services for Indian street youth, in addition to the state-wide programs. I-India is one such program that functions as a ‘Child Inn’ for runaway and orphaned boys found living on the streets. The Inn offers protection and rehabilitation from exploitation. A similar organization called Soham for Kids provides under-privileged and orphaned children with healthcare, nutrition and a quality education that will provide skills needed to break the vicious cycle of poverty.

6. Child Labour and human rights law

6.1 Article 24 of the Constitution prohibits child labour, and legislation establishes a legal basis to identify, prosecute and stop child labour in India. The Child Labour (Prohibition & Regulation) Act 1986 prohibits the employment of children below the age of 14 years in certain occupations and processes, and regulates the working conditions of children.

6.2 India also established a National Policy on Child Labour in 1987, which adopts a gradual and sequential approach in focusing on the rehabilitation of children working in hazardous occupations, and further envisions the strict enforcement of laws coupled with various development programs. However, child

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22 http://www.childlineindia.org.in/Integrated-Programme-for-Street-Children-IPSC.htm
24 Juvenile Justice (Care and Protection) of Children Act, 2000, & The Child Labour (Prohibition and Abolition) Act 1986
labour remains a major challenge for India. A major reason for this is poverty; the prevalence of child labour is driven by survival rather than by force. Another key reason is lack of education.

6.3 The National Human Rights Commission (“NHRC”) has been deeply concerned about the prevalence of child labour in India, as it leads to denial of the basic human rights of children guaranteed by the Constitution and the International Covenants. The Commission on child labour has observed that:

“No economic or social issue has been of such compelling concern to the Commission as the persistence, fifty years after Independence, of widespread child labour in our country. It prevails, despite articles 23,24,39(e) & (f), 41, 45 and 47 of the Constitution and despite the passing of various legislations on the subject between 1948 and 1986. It has defied the terms of six Conventions of the International Labour Organization to which India is a party and the Convention on the Rights of the Child, in addition. Despite the announcement of a National Child Labour Policy in 1987, the subsequent constitution of a National Authority for the Elimination of Child Labour (NAECL) and the undertaking of National Child Labour Projects (NCLP) in an increasing number of areas of our country, the goal of ending child labour remains elusive, even in respect of the estimated two million children working in hazardous industries who were to be freed from such tyranny by the year 2000”.

6.4 The Commission focuses its attention predominantly on the manufacturing industries, where rampant reports of child labour have been received - specifically with respect to the jewellery, glass, silk, stone, diamond cutting, ship breaking, and construction work industries.

6.5 The NHRC monitors the child labour situation in the country through its Special Rapporteurs, visits by members, sensitization programmes and workshops, launching projects, interaction with industry associations and other concerned agencies, and coordinates with State Governments and NGOs to ensure that adequate steps are taken to attempt to eradicate child labour.

6.6 The NHRC believes that unless and until the reality of free and compulsory education for all children up to the age of 14 years is realised, the problem of child labour will persist. The Commission has involved the NGO sector in the non-formal education of child labourers, and a number of schools and training centres founded for this purpose are now functioning in the districts of the ‘carpet belt’. There has also been a distinct improvement in the level of awareness among the general public about child labour issues.

7. Human trafficking and human rights law

7.1 Human trafficking is prohibited under the UN Convention on Transnational Organized Crime (“UNTOC”). The Convention, adopted by the UN General Assembly on 15 November 2000, is the primary international authority on this issue. The Convention is supplemented by 3 Protocols targeting particular areas of organised crime, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (“PSPTPEWC”). PSPTPEWC is the first international legally binding instrument with a settled definition of the crime of trafficking in persons. Its objective is to facilitate the establishment of consistent domestic criminal offences for human trafficking, and aims to assist the victims of trafficking “with full respect for their human rights” through the ‘three P’s’ – “Prosecution of perpetrators, Protection of victims and Prevention of trafficking.”

7.2 India became a signatory to UNTOC and the 3 Protocols in December 2002. In May 2011, India became the fourth South Asian country to ratify these instruments. India has also ratified the South Asian Association for Regional Cooperation (“SAARC”) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution 2002 and the SAARC Convention on Regional

25 http://nhr.nic.in/hrissues.htm

7.3 Notwithstanding these significant steps, people trafficking from India remains unacceptably and worryingly high; approximately 6,000 women, girls, and boys are trafficked from Bangladesh, India and Pakistan each year. In an interview with the UN Office on Drugs and Crime, the Union Home Secretary for the Government of India revealed that “in addition to sexual exploitation, trafficked persons are used for forced labour, some are forced into marriages, some fall prey to organ transplanting rackets and some children end up in Middle-East countries as camel jockeys.” This topic will be explored further in the Cross Borders and Conflict chapter.

28 Specifically, the Act substituted new sections 370 and 370A for section 370.
29 Childline India, 'Cross Border trafficking to India', http://www.childlineindia.org.in/1098/Cross-Border-trafficking-to-India.htm
B. Child Welfare

1. Legal protections for children who have been victims of abuse, neglect or abandonment

1.1 There are a number of institutions and programmes targeted at protecting children in India. The genesis of these initiatives can generally be found in the provisions of the National Policy for Children 1974, Juvenile Justice (Care and Protection) Act 2000 (currently being amended), National Charter for Children 2003 and National Plan of Action for Children 2005.

2. Legislative Protection

Juvenile Justice (Care and Protection of Children) Bill 2014

2.1 The Juvenile Justice (Care and Protection of Children) Bill 2014 (the “Bill”) was introduced to parliament on 12 August 2014 and is currently under consideration. If passed, the Bill will repeal the Juvenile Justice (Care and Protection of Children) Act 2000 (the “Act”). The Act is supported by the Juvenile Justice (Care and Protection of Children) Act 2000 Rules.

2.2 The Bill’s objective is to amend the Act to better address the increasing incidents of abuse of children in institutions, inadequate facilities, the poor quality of care and rehabilitation measures in homes for children, adoption delays, the high pendency of cases, the lack of clarity surrounding roles, responsibilities and accountability of institutions, and the inadequate mechanisms to deal with increasing crime committed by children between the ages of 16-18.

Child Welfare Committee

2.3 Under the Act, each State Government is required to establish at least one Child Welfare Committee (the “Committee”) for exercising the powers and discharging the duties created for the Committee by the Act. Committee members must have specific qualifications and cannot be a member for more than three years. The Committee consists of five members: a Chairperson and four other members as the State Government thinks fit to appoint (including one woman and a child welfare expert).

2.4 The Committee has the authority to deal with cases relating to the care, protection, treatment, development and rehabilitation of children in need of care and protection, as well as to provide for their basic needs and protection. The Committee has the same powers conferred on a Metropolitan Magistrate or Judicial Magistrate of the First Class by the Code of Criminal Procedure 1973. The District Magistrate conducts a quarterly review of the Committee’s activities and deals with appeals against decisions of the Committee in relation to foster care and sponsorship.

2.5 The cost of setting up Committees is shared by the Central and State Governments.

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31 Clause 28(1)
32 Clause 28(4)
33 Clause 28(6)
34 Clause 30
35 Clause 28(9)
36 Clause 28(9)
37 Clause 28(10)
Committee activities

2.6 Clause 31 of the Bill lists the functions and responsibilities of the Committee which include: taking receipt of children brought before it, investigating the safety and wellbeing of children, declaring a person as “fit” for taking care of a child, making orders for the care, protection, rehabilitation or restoration of children, selecting the appropriate registered institution for a child, inspecting residential facilities for children, and declaring a child legally free for adoption.

2.7 Any child who is in need of care and protection may be brought before the Committee by any police officer, or public servant, Childline Services, a Child Welfare Officer or probation officer, any social worker, any nurse or doctor, or by the child him/herself. The Committee will then make inquiries and may make an order for the placement of the child in a children’s home or shelter, “fit facility” or with a “fit person” and for a social investigation into the child’s situation to be conducted within 15 days by a Child Welfare Officer or Child Welfare Police Officer. The Committee may also conduct its own inquiries into the child’s welfare. Any child under six, who is an orphan, surrendered or appears to be abandoned must be placed in a Specialised Adoption Agency, where available.

2.8 The Committee is required to pass final orders within four months of the child first being presented to it. Final orders could involve a declaration that the child is in need of care and protection, restoration of the child to his/her parent or guardian, placement of the child in a home, facility, with a “fit person” or in foster care, the provision of sponsorship or directions to give the child medical attention, psychiatric/psychological support, training, educational services or other developmental assistance.

2.9 The Committee is required to submit a quarterly report of closed and pending cases to the District Magistrate who may direct the Committee to take remedial action to resolve outstanding cases. If necessary, the District Magistrate can send the report to the State Government, which has the power to replace the Committee if they have failed to follow the directions of the District Magistrate after three months.

2.10 Where a child appears to be an orphan or abandoned, the Committee must try to trace the parents or guardian of the child and if unsuccessful, is to declare the child legally free for adoption. Where the child has been surrendered by a parent or guardian and the parent/guardian has not revoked their application to surrender the child after one month, the Committee may declare the child legally free for adoption. At least three out of the five members of the Child Welfare Committee must support the decision to declare an orphan, abandoned or surrendered child as legally free for adoption. This
declaration must then be reported to the State Agency and Central Authority every month, together with the number of pending cases.53

Other protections under the Bill

2.11 There are specific provisions in the Bill dealing with children who come into conflict with the law (see clauses 11-27). These children come under the purview of the Juvenile Justice Board which exists in every district and is made up of an experienced magistrate and two social workers.54

2.12 The Bill provides for mandatory reporting (within 24 hours) of a child who appears or claims to be abandoned or lost, or a child who appears to be an orphan without family support to Childline Services, the police, a Child Welfare Committee, the District Child Protection Unit, or otherwise for the delivery of the child to a registered child care institution. Failure to report is an offence punishable by up to six months in jail and/or a fine of 10,000 Rupees.55

2.13 Anyone who is in charge or has control over a child, who assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be subject to such treatment in a manner that is likely to cause unnecessary mental or physical suffering, is punishable by imprisonment for up to three years, or a fine of 100,000 Rupees or both. Anyone who is employed by or manages an organisation which is entrusted with the care and protection of the child who commits this offence will be liable to imprisonment for up to five years and a fine of up to 500,000 Rupees.56

2.14 Anyone who employs or uses a child for the purpose of begging or causes any child to beg shall be punishable by imprisonment for up to five years and a fine of 100,000 Rupees.57

2.15 Anyone who gives, or causes to be given to any child, alcohol, a narcotic drug, a tobacco product or psychotropic substance shall be punishable by imprisonment for up to seven years and a fine of up to 100,000 Rupees.58

2.16 Anyone who uses a child for vending, peddling, carrying, supplying or smuggling any alcohol, narcotic drug or psychotropic substance, shall be liable for imprisonment for up to seven years and a fine of up to 100,000 Rupees.59

2.17 Anyone who engages a child and keeps him/her in bondage for employment or withholds his/her earnings or uses his/her earnings for his own purposes shall be punishable by imprisonment for up to five years and a fine of 100,000 Rupees.60

2.18 Anyone who gives or receives an orphan, abandoned or surrendered child, for the purpose of adoption, without following the requirements of the Bill, will be punishable by imprisonment for up to three years or a fine of 100,000 Rupees, or both. If this is committed by a recognised adoption agency, the registration of the agency will also be withdrawn for at least one year.61

2.19 Anyone who sells or buys a child for any purpose shall be punishable by imprisonment for up to five years and a fine of 100,000 Rupees.62 and

51 Clause 39(4) and (5)
54 Clause 4
55 Clause 33(1) and 35
56 Clause 76
57 Clause 77
58 Clause 78
59 Clause 79
60 Clause 80
61 Clause 81
62 Clause 82
2.20 Anyone who commits any of the above offences on a disabled child is liable to twice the penalty provide for such offence.\(^{63}\)

**Enforcement**

2.21 The Bill requires each State Government to establish a Child Protection Society for the State and Child Protection Unit in every District, comprised of officers appointed by that Government who are responsible for enforcing the Bill.\(^{64}\) In addition, each police station must have one police officer of certain rank, designated as the child welfare police officer and who deals exclusively with children either as victims or perpetrators.\(^{65}\)

2.22 Each State Government must also establish a Special Juvenile Police Unit in each district and city, led by a police officer who must not be below the rank of Deputy Superintendent, who is supported by the child welfare police officer(s) and two social workers (one of whom must be a woman).\(^{66}\)

3. **Indian Penal Code**

3.1 The Code also contains some offences for the protection of children. Examples include:

(a) Section 317 - the father, mother or guardian of a child under 12 who abandons the child is punishable by imprisonment of up to seven years, a fine or both;

(b) Section 361 - anyone who entices a male under 16 years old or a female under 18 years of age from his/her guardian without the consent of the guardian is said to kidnap the minor and is punishable by imprisonment for up to seven years and also a fine;

(c) Section 363A - anyone who kidnaps a minor for the purpose of begging shall be punishable by imprisonment for up to 10 years and liable to a fine. Anyone who maims a minor for the purpose of begging shall be punishable by imprisonment by life imprisonment and a fine;

(d) Section 369 - anyone who kidnaps or abducts a child under 10 to steal from him/her is punishable by imprisonment of up to seven years and a fine;

(e) Section 372 - anyone who sells or lets to hire any person under 18 for the purpose of prostitution shall be punishable by imprisonment for up to 10 years and a fine; and

(f) Section 373 - anyone who buys, hires or otherwise obtains possession of a person under 18 for the purpose of prostitution shall be punishable by imprisonment of up to 10 years and a fine.

**Other related legislation**

3.2 In addition to the legislation above, there is also:

(a) the **Guardian and Wards Act 1890** which deals with the appointment of guardians and his/her duties, rights and liabilities;

(b) the **Orphanages and Other Charitable Homes (Supervision and Control) Act 1960** which provides for the supervision and control of orphanages and homes for neglected children;

(c) and the **Protection of Children from Sexual Offences Act 2012**.

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\(^{63}\) Clause 86  
\(^{64}\) Clause 107  
\(^{65}\) Clause 108  
\(^{66}\) Clause 108
3.3 The Constitution also contains some child-specific articles, such as:

(a) Article 24 - Prohibition of employment of children in factories - “no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment”; 

(b) Article 39(f) - Certain principles of policy to be followed by the State - “that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment”; and

(c) Article 45 - Provision for early childhood care and education to children below the age of six years - which states that “the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.”

4. Other government initiatives: the Integrated Child Protection Scheme (“ICPS”)

4.1 In addition to legislative protections, the Ministry of Women and Child Development maintains the ICPS which is a centrally sponsored government scheme that formulates plans, policies and programmes for child welfare and also enacts and amends legislation in this area.

4.2 Through the ICPS which was introduced in 2009, the Ministry aims to improve the wellbeing of children in difficult circumstances and reduce their vulnerability to situations and actions that lead to abuse, neglect, exploitation, abandonment and separation of children. It endeavours to do this by increased access to and the quality of child protection services; clearly articulated responsibilities and enforced accountability for child protection; and established and functioning structures at all government levels for the delivery of statutory and support services to children in difficult circumstances.

4.3 The ICPS comprises a number of special programmes:

(a) Integrated Programme for Street Children (“IPSC”)

The objective of this programme is to provide shelter, nutrition, health care, education and recreation facilities to street children and to protect them from abuse and exploitation. Under this programme, state governments, local bodies, educational institutions and voluntary organisations are able to apply for up to 90% of the cost of a project (up to a maximum of 1.5 million Rupees per annum). Eligible projects include those which offer counselling services, reintegration programs, education or vocational training, health services or establish drop-in shelters.

(b) Programme for Juvenile Justice

Under this initiative, the Government of India provides financial assistance to State Governments to establish and maintain homes, and provide assistance to children who have come into conflict with the law. Funding is based on proposals submitted by the States.

(c) Childline Services

This is a 24/7 emergency phone outreach service linking children in distress and in need of care and protection to emergency and long-term care and rehabilitation services. It was established in 1999 and operates in 83 cities.

67 For a conceptual background to the scheme click here.
(d) Other schemes

- **Scheme for Assistance to Homes for Children** - The purpose of this scheme is to promote in-country adoption of orphans, abandoned or destitute infants or children up to six years old.

- **Scheme for Working Children in Need of Care and Protection** - This scheme provides education and vocational training, medicine, food, recreation and sporting equipment for children kept as domestic child labourers or at roadside restaurants, mechanic shops, etc.

- **National Child Labour Project** - this project rehabilitates child labourers through special schools/rehabilitation centres by providing education, vocational training, supplementary nutrition, and stipends to children withdrawn from employment.

- **Central Adoption Resource Agency** - an autonomous body created to promote in-country adoption and regulate inter-country adoption.

5. **Government child protection and foster care systems**

5.1 The Bill provides that the primary objective of any children’s home, Specialised Adoption Agency or open shelter must be the restoration and protection of a child.\(^{68}\) This means placing the child with his/her parents, adoptive parents, foster parents, guardian or other “fit person”.\(^{69}\)

5.2 The achievement of this objective is to be based on an individual care plan for the child, with an effort to keep all siblings together.\(^{70}\)

5.3 Any institution (including those that are government-run), that wholly or partially provides housing for children in need of care and protection or children in conflict with law, must be registered.\(^{71}\) To be registered, the State Government assesses the capacity and purpose of the institution and categorises it as a shelter home,\(^{72}\) children’s home,\(^{73}\) open shelter,\(^{74}\) Specialised Adoption Agency,\(^{75}\) observation home,\(^{76}\) special home,\(^{77}\) or place of safety.\(^{78}\) Registrations last for five years and are subject to renewal every five years. Failure to comply with registration requirements is punishable by imprisonment of up to one year and/or a fine of 100,000 Rupees.\(^{79}\)

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\(^{68}\) Clause 41(1)  
\(^{69}\) Clause 41(3)  
\(^{70}\) Clause 40(1)  
\(^{71}\) Clause 42(1)  
\(^{72}\) Shelter homes shall include: short stay homes for children needing temporary shelter for up to one year; transitional homes providing immediate care and protection for up to four months; and 24 hour drop in centres for children needing day care or night shelter (Clause 30 - Juvenile Justice (Care and Protection of Children) Act 2000 Rules.  
\(^{73}\) Clause 51(1): children’s homes provide for the care, treatment, education, training, development and rehabilitation of children.  
\(^{74}\) Clause 44(2): an open shelter is a community based facility for children in need of residential support, on a short-term basis, with the objective of protecting them from abuse, or weaning them, or keeping them away from a life on the streets.  
\(^{75}\) Clause 2(57): a Specialised Adoption Agency is an institution that houses orphans, abandoned and surrendered children, placed there by order of the Committee, for the purpose of adoption.  
\(^{76}\) Clause 48(1): an observation home provides for the temporary reception, care and rehabilitation of any child alleged to be in conflict with the law, pending any inquiry under the Bill.  
\(^{77}\) Clause 49(1): a special home provides rehabilitation for those children who have found to have committed a criminal offence and have been placed there by an order of the Juvenile Justice Board.  
\(^{78}\) Clause 2(46): a place of safety is any place or institution, not being a police lock up or jail, established separately or attached to an observation home or a special home, where the person in-charge is willing to receive and take care of the children alleged or found to be in conflict with the law, by an order of the Juvenile Justice Board, or the Children's Court; clause 42(2).  
\(^{79}\) Clause 43
5.4 Once registered, an institution must comply with the Committee’s orders to accept a child (subject to capacity), irrespective of whether it is financially supported by the Central or State Government.\[80\]

**Foster care**

5.5 The Committee may order a child in need of care or protection to be placed in foster care (or group foster care), where the foster family does not include the child’s biological or adoptive parents.\[81\] No child who is regarded as being capable of adoption by the Committee is to be placed in long-term foster care.\[82\]

5.6 The foster family will be selected based on its ability, intent, capacity, and prior experience of taking care of children.\[83\] Siblings will be kept together where possible and appropriate.\[84\] Foster families are responsible for providing education, health and nutrition to the child, and to ensure the child’s overall wellbeing.\[85\]

5.7 The State Government, after taking into account the number of foster children being cared for, provides monthly funding to each foster family. Such funding may be contingent on the District Child Protection Unit conducting an inspection of the foster home.\[86\] The Committee is also to conduct monthly inspections of foster families and has the discretion to remove the child from a foster family if it is found lacking.\[87\]

**Sponsorship**

5.8 Sponsorship involves providing supplementary support, financial or otherwise, to families to meet the medical, educational and developmental needs of a child.\[88\] Sponsorship may be provided to widows, an orphan’s extended family, parents with life threatening diseases, or parents who are incapacitated due to accident and are unable to take care of their children both financially and physically.\[89\]

**Requirements for registered child welfare institutions**

5.9 Under the Bill, all registered institutions charged with rehabilitating and reintegrating children back into society are required to provide the following services (at a minimum):

(a) basic facilities e.g. food, shelter, clothing, medical attention;

(b) specialised equipment e.g. wheelchairs, prosthetic devices, hearing aids, braille kits;

(c) appropriate education; and

(d) specific facilities for children between 6-14 years old in compliance with the Right of Children to Free and Compulsory Education Act 2009 - e.g. skill development, occupational therapy and life skill education, mental health interventions, birth registration, legal aid, and assistance with obtaining proof of identity.\[90\]

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\[80\] Clause 42(8)
\[81\] Clause 45(1)
\[82\] Clause 45(9)
\[83\] Clause 45(2)
\[84\] Clause 45(3)
\[85\] Clause 45(6)
\[86\] Clause 45(4)
\[87\] Clause 46(8)
\[88\] Clause 2(58)
\[89\] Clause 46(2)
\[90\] Clause 54
Oversight of registered institutions

5.10 Every institution is to have a Management Committee to manage the institution and monitor the progress of every child. Institutions are also monitored by Inspection Committees for each State and district established by the State government. Inspection Committees are to conduct visits to all facilities at least once every three months and report their findings to the District Child Protection Unit or State Government.91

5.11 Appeals against an order of the Committee or Juvenile Justice Board can be made to the Children’s Court within 30 days of the order being made (except for appeals regarding foster care and sponsorship care which are heard by the District Magistrate).92

6. What rights abused and neglected older youth have

6.1 People between the ages of 15-29 make up 27.5% of India’s population and contribute approximately 34% to India’s Gross National Income.93 The National Youth Policy 2014 (“NYP 2014”) outlines the Indian Government’s vision for the development of youth in India (referred to as people aged between 15-29) and serves as a guiding document towards the achievement of five key objectives: (i) create a productive workforce, (ii) develop a strong and healthy generation, (iii) instill social values and promote community service, (iv) facilitate participation and civic engagement, and (iv) support youth at risk and create equal opportunities for all.94

6.2 The NYP 2014 does not provide specific measures for older youth, nor are there targeted laws dealing with this specific group. However, the NYP 2014 recognises that “youth at risk” do require special attention, and identifies the following imperatives in assisting youth:

(a) enablement and capability building for disadvantaged youth;
(b) ensuring economic opportunities for youth in conflict-affected regions;
(c) developing a multi-pronged approach to supporting youth with disabilities; and
(d) creating awareness and opportunities to prevent youth being put at risk.

6.3 The NYP 2014 considers “youth at risk” to encompass those who are: economically backward, women, disabled, living in conflict zones, addicted to drugs/alcohol, involved in human trafficking, or involved in hazardous working conditions.95

6.4 When it comes to legislative protection for youth, different age limits apply depending on the law involved. Under the IPC, a child is not criminally responsible for his/her actions until reaching seven years of age,96 a girl must be at least 16 to give sexual consent (unless she is married) and it is an offence to kidnap a boy under 16 or a girl under 18.

7. Early and forced marriages

International human rights context

7.1 While the evil of ‘early marriage’ takes many different forms and has multifarious causes, one issue is paramount- it is a violation of human rights. The ‘right to free and full consent to a marriage’ is

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91 Clause 55
92 Clause 102
93 National Youth Policy 2014, page 3
94 National Youth Policy 2014, page 5
95 National Youth Policy 2014, page 22
96 Indian Penal Code 1860, section 82
recognized in the 1948 Universal Declaration of Human Rights ("UDHR") and in many subsequent human rights instruments.

7.2 Child marriage impedes the development of children. It has a profound physical, intellectual, psychological and emotional impact on children, cutting off educational opportunities and chances of their personal growth and empowerment. The girl child becomes especially vulnerable to several health problems, domestic violence, early widowhood, trafficking and other forms of abuse.

7.3 However, many societies continue to support the idea that girls should marry on attainment of puberty or soon after. It may be a part of the local tradition; parents may believe it safeguards their daughters’ future, and poverty or conflict may propel it. Despite considerable effort, prevention of the age old malaise of child marriage remains a major challenge for the state, as it is steeped in several multi-dimensional, socio-economic, cultural, and community related aspects.

7.4 International law is well equipped to tackle violence against women and children, and holds the state accountable for any violation of the rights of the people by non-state actors. Under General Recommendation 19 and the 1992 Declaration on the Elimination of Violence against Women ("DEVAW") States must "exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons." States are also accountable under Article 34 of the UN Convention on the Rights of the Child ("CRC"), which mandates they protect the child from all forms of sexual exploitation and sexual abuse.

8. Child marriage in India

8.1 Archaic practices and customs such as Sati, Dowry and female infanticide have slowly and steadily led to the downfall of women in India. Consequently, the existence of these practices and general insecurities surrounding women denigrated the presence of a girl child in a family. This resulted in parents dispensing with the responsibility of taking care of their daughters by marrying them off at an early age - in many instances, even before they reach marriageable age. The practice of child marriage also stemmed from military alliances, which were formed to preserve honour within the Indian feudal society. These were upheld by marriage arrangements between families through the betrothal of young children or babies.

8.2 Throughout much of India, the majority of marriages are still arranged by parents. Negotiations and deliberations are carried out between the elders of the families, based on a host of determining factors; however, the two individuals involved are not made part of such discussions. A good marriage is regarded as the union of two families, not two individuals. ‘Child marriage’ is a marriage where two individuals/minors are coerced to marry each other by each other’s families/guardians, before attainment of adulthood.

8.3 In many countries throughout the world, child marriage is still a deeply entrenched social and economic institution. However, studies have indicated that India surpasses other countries by a wide margin: about 40% of all child marriages take place in India. In India, illiteracy, poverty, patriarchy, cultural and social malpractices, and feudalism are seen as some of the apparent causes of child marriage. A prominent reason cited to justify child marriage is that if not married off soon enough, the woman is seen as being at risk of losing her virginity to someone besides her husband. Some of these marriages could be construed as business transactions for reasons such as the clearing of debt in exchange for a minor bride.

(a) As per the District Level Household and Facility Survey of 2007-08 ("DLHS 3"), nearly half (43%) of Indian women aged 20 to 24 are married before the age of 18. The National Family

97 UNICEF Statistics and Monitoring Section, Division of Policy and Strategy (2013)
Health Survey of 2005-2006 ("NFHS-3") confirmed that 45% of women aged 20-24 years were married before the age of 18. Of these, 58.5% were in rural areas and 27.9% in urban areas. As per this survey, the states with the highest incidence of child marriage in the country are Bihar, Rajasthan, Jharkhand, Uttar Pradesh, West Bengal, Madhya Pradesh, Andhra Pradesh and Karnataka.

(b) UNICEF’s Report on Child Marriage revealed that Bihar has the highest incidence of child marriage at 68%, while Himachal Pradesh has the lowest incidence at around 9%. The analysis also reveals an east-west corridor spanning six states, including Rajasthan, Madhya Pradesh, Uttar Pradesh, Bihar, Jharkhand and West Bengal, that have the highest incidence of child marriage ranging from 51.9% to 68.2%. In each of these states, at least one in two currently married women in age group 20-24 years happens to be a child bride.

(c) According to the National Crime Record Bureau ("NCRB 2013"), in regards to crimes against children, the highest charge-sheet rate was reported in cases of rape (98.3%) closely followed by cases under the Prohibition of Child Marriage Act (95.1%). However, the conviction rate at the national level for these crimes stood at only 30.9%.

8.4 The continuing prevalence of child marriage has had an adverse impact on the country’s health and education sectors. As far as the under-aged and child brides are concerned, their education is either truncated by marriage, or they are left at the mercy of the family that they are married into who bear the cost of their education and livelihood. Studies have shown that married children are susceptible to multiple health risks. They have limited access to contraceptives, reproductive health services, and sexual health information. The majority of the young brides are exposed to early and frequent sexual relations, leading to sexually transmitted infections or repeated pregnancies and childbirth before they are physically and psychologically mature.

9. Indian Legal Context

Constitutional framework and government programs

9.1 The Indian constitutional framework empowers the state to adopt measures of positive discrimination in favour of women and children for dismantling the cumulative socio-economic, educational, and political disadvantages faced by them. Article 15 of the Constitution guarantees special attention to children through necessary and special laws and policies that safeguard their rights. For further information, see Chapter A above.

9.2 In order to abolish child marriage, the Government of India has adopted major policies and programmes such as the National Policy for Children 2013, the National Strategy on Child Marriage, and the National Plan of Action specifically looking into the prevention of Child Marriage. The central and state governments have also launched various schemes such as Rajiv Gandhi Scheme for Empowerment of Adolescent Girls ("RGSEAG"), Balika Samriddhi Yojana ("BSY"), National Programme for Adolescent Girls ("Kishori Shakti Yojana"), the ICPS, Conditional Cash Transfer Scheme for the Girl Child and Ujjawala- Scheme for Combating Trafficking in order to raise the status of the girl child and discourage social evils like child marriage, female feticide, trafficking and child sexual abuse, among others.

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98 DLHS 3, 2007-2008
National legislative framework

9.3 In India, several legislative initiatives and programmes have been designed to prevent child marriage. The reformist movements of the 19th and 20th centuries, such as the Brahmo Samaj and Arya Samaj, played a critical role in educating the masses to challenge the antediluvian practice. In the 1920s, the women’s movement campaigned and petitioned for raising of the age for marriage and consent before the Joshi Committee, set up to review the Hindu Child Marriage Bill.

9.4 As a result, the Child Marriage Restraint Act 1929 ("CMRA"), popularly known as the Sharda Act, was brought into force with the objective of eliminating child marriage. The CMRA was first amended in 1940 to increase the marriageable age from 14 to 15 years, and in 1978, it was further amended to raise the minimum age of marriage by a further three years up to 18 years in the case of girls, and up to 21 years in the case of boys.

9.5 However, the CMRA had its shortcomings; the procedures laid down were cumbersome, and it did not identify the authorities responsible for preventing child marriages. Most importantly, the CMRA did not focus on the prevention or prohibition of child marriages. The CMRA was later repealed and replaced by the Prohibition of Child Marriage Act 2006.

10. The Prohibition of Child Marriage Act 2006 ("PCMA")

10.1 Definition of Child and Child Marriage: “Child” means a person who, if a male, has not reached 21 years of age, and if a female, has not reached 18 years of age; and “child marriage” means a marriage to which either of the contracting parties is a child (sections 2(a)&(b) PCMA).

10.2 Punishment for anyone who performs a child marriage is imprisonment, which may extend to two years, and/or a fine up to 100,000 Rupees. Similar punishment is prescribed for a male over 18 years of age marrying a child; or anyone who performs, conducts, directs or abets any child marriage (sections 9, 10 & 11 PCMA). Courts can also issue injunctions prohibiting the solemnization of child marriages (section 13 PCMA). Offences under the PCMA are clearly within the jurisdiction of the court and non-bailable (section 15 PCMA).

10.3 Voidable marriage: Unlike the earlier legislation, the PCMA makes child marriage voidable at the option of contracting party who was a child at the time of marriage (section 3 (1) PCMA).

10.4 Annulment of such marriage: (section 3(3) PCMA). A petition for annulling a child marriage by a decree of nullity can only be done by the contracting party to the marriage who was a child at the time of the marriage. If the petitioner is a minor, the guardian or next friend with the Child Marriage Prohibition Officer ("CMPO") shall file on behalf of the minor. The petition should be filed before two years of attainment of majority.

10.5 Orders that can be granted by the District court (sections 3(4), 4 & 5 PCMA) include directions for both parties to the marriage to return the money, valuables, ornaments and other gifts received on the occasion of the marriage by them from the other side, or an amount equal to the value of such valuables, ornaments, other gifts and money. Interim or final orders can be made directing the male contracting party to pay maintenance to the female contracting party to the marriage until her remarriage, or provide suitable accommodation until her remarriage. Orders can also be made regarding the custody of any children (including maintenance payments).

10.6 Appointment of implementing authorities: The Act emphasises the prohibition of child marriages by providing for the appointment of CMPOs by the state governments, and empowers these officers to prevent and prosecute the solemnization of child marriages and to create awareness on the issue. The

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Act also gives the District Magistrate powers to stop and prevent the solemnization of mass child marriages (sections 13 and 16 PCMA).

11. State Government Initiatives for ensuring effective Implementation

Awareness generation:

11.1 Lack of education and awareness about the consequences of child marriage are important obstacles to abolishing child marriage. Most states have taken initiatives to generate awareness about the PCMA. For example, they have used electronic media such as radio and television programmes for reaching out to the public. Print media such as newspapers, pamphlets and hoardings) has been used extensively to reach out at the district, sub-division and block levels. States have also initiated other innovative programmes for creating awareness in the community.

12. Other State Governments Initiatives

12.1 There are a range of programmes and schemes addressing the issue of child welfare in India, but very few programs specifically focused on child marriage. It has been left to the individual states to implement their own initiatives, resulting in significant variability across the country in how this issue is managed.

12.2 In order to standardize agency procedures and ensure that they are aligned to the principles laid down under the Act, some states have prepared guidelines or Standard Operating Procedures (“SOPs”). In Odisha and Maharashtra, the Department of Women and Child Development has issued a SOP for Child Welfare Committees on child marriage and other related offences. In May 2014, a SOP on child marriages were issued before the Akha Teej festival by the Directorate of Child Rights (“DCR”) in Rajasthan. The SOPs provide the agencies with a better understanding of the Act and its effective implementation to address the specific and individualized needs of children.

12.3 Uttar Pradesh has also developed a State Action Plan for combating the crisis of child marriage in the state. The State Action Plan includes strategies for access to support services; communication and advocacy tools; data management; monitoring and evaluation.

13. Commercial sexual exploitation of youth

13.1 Commercial sexual exploitation of children is a commercial transaction that involves the sexual exploitation of a child, such as prostitution of children and child pornography, and may involve coercion and violence. Sexual exploitation may also amount to forced labour and a form of contemporary slavery.

13.2 Article 23 of the Constitution prohibits trafficking in human beings and forced labour. In addition, the ITPA (currently being amended), select provisions of the IPC, the Juvenile Justice (Care and Protection of Children) Act 2000, and the Child Marriage Prohibition Act 2006 also affect commercial sexual exploitation.

13.3 These local laws are supplemented by an international legal framework which includes the UN Convention on the Rights of the Child (and its Optional Protocols on the Sale of Children, Child Prostitution, and Child Pornography), the Convention on the Elimination of all forms of Discrimination Against Women, the Worst Forms of Child Labour Convention, the UN Convention Against Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons.

India has also ratified the SAARC, the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution and the Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia.

To supplement these legislative mechanisms, India has a number of policies and plans in place to combat commercial sexual exploitation, including the National Child Labour Policy 1987, the National Policy for the Empowerment of Women 2001, the National Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children 1998, the National Plan of Action for Children 2004 and the draft integrated National Plan of Action to Prevent and Combat Trafficking of Human Beings with Special Focus on Children and Women.

The National Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children is aimed at awareness generation and social mobilisation, health care services, education and child care, housing, shelter and civic amenities, economic empowerment, legal reforms and law enforcement, rescue and rehabilitation, institutional machinery and developing a methodology for translating action points into action.

However, these schemes remain difficult to implement. Many children and youth who are victims of commercial sexual exploitation are also victims of human trafficking. Further education and training of stakeholders is necessary, particularly the need to prevent second-generation trafficking by providing education options to the children of sex workers and other vulnerable children.

In summary, the main approach to legal reform has been to regulate the system in which violations occur by taking an increasingly hard line against perpetrators. Governments have generally avoided enacting laws that regulate activities within the private domain, based on the common assumption that families, immediate or extended, fulfil their obligations to children’s rights to the best of their abilities. While measures have been taken to ensure children’s improved protection from abuse and exploitation, existing laws require re-examination and reformulation to cover the wide range of offences now being witnessed.

In addition, ineffective enforcement and judicial procedures are factors exacerbating the problem of child sexual exploitation and abuse, as is the silent collusion of the larger society’s general unwillingness to acknowledge or protest this atrocity. Also, few consider the social, economic, cultural and religious environment that sometimes overrides the law and leaves children, especially girls, at great risk.
C. **Criminalisation of Homelessness of Street Youth**

1. **Introduction**

1.1 The phenomenon of street children is a result of the complex interplay of various socio-economic and cultural factors and religious, cultural, linguistic and geographical diversity. The risks of children living life on the streets are high and their vulnerability to exploitation is enormous.

1.2 As street youth in India are forced to carry out many aspects of their daily life in public, do not have a safe place to live and lack adequate access to support services, they are often forced to engage in criminal behaviour in order to survive. Consequently, young individuals encounter the criminal justice system as a direct result of their homelessness and, in turn, their lifestyles become criminalised.

1.3 This section defines criminalisation and provides an overview of the youth justice system in India. It then describes some of the most common behaviours bringing India’s street youth into contact with the criminal justice system such as illicit drug use, public space offences (such as begging) and prostitution.

2. **Criminalisation of homelessness in India**

2.1 Criminalisation can be defined as ‘the use of policing and the criminal justice system as central features of our response to homelessness’. As a term, criminalisation also recognises that using law enforcement mechanisms to address homelessness means that people enter the criminal justice system.

2.2 In this section, criminalisation focuses on the interrelationship between India’s street youth and the criminal law by reference to three examples: public space offences, illicit drug use and prostitution.

3. **The Criminal Justice System in India**

3.1 Criminal laws in India are largely governed by the Code of 1860. As India is a federal system with residual powers lying with the Union, or Central Government, this is the code that accounts for much of the criminal justice system throughout India. There are, however, state acts that do provide for certain criminal offences and some examples are referred to below.

3.2 As it stands, the Juvenile Justice (Care and Protection of Children) Act 2000 (the “Juvenile Justice Act”) establishes a separate criminal justice system for people aged under 18. Under this Act, minors accused of a crime are brought before the Juvenile Justice Board. The focus of the Board is to provide rehabilitation and counselling for youth offenders rather than punishment.

3.3 As it applies to children, relevant provisions of the Code are:

(a) section 82 provides that a child under seven years of age cannot commit an offence;

(b) section 83 provides that a crime committed by a child between seven and 12 years of age is not an offence, if he has not attained sufficient maturity of understanding. This is usually a matter for the judge for the judge to determine; and

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107 Ibid.

(c) section 90 provides consent of a child below 12 years is not valid consent. According to section 89, a child below 12 years cannot give valid consent to suffer/cause any harm which may occur from an act done in good faith and for its benefit.

4. Juvenile Justice (Care and Protection of Children) Bill 2014
4.1 In 2014, the Juvenile Justice (Care and Protection of Children) Bill (the “Bill”) was introduced in response to a violent gang rape and murder in December 2012, in which one of the defendants, aged 17 at the time of the attack, was sentenced to three months in a special home, while his co-defendants were sentenced to death.

4.2 The Bill aims to deal with concerns over increasing levels of violent crime committed by children between the ages of 16 and 18. Under the Juvenile Justice Act, juveniles cannot be tried as adults; instead, they may spend three years maximum in a ‘special home’ or ‘fit facility’.

4.3 Under amendments in the Bill, however, juveniles aged 16 and 18 may be tried and penalised as adults where they have committed a serious offence (subject to imprisonment of three to seven years) or heinous offence (minimum punishment of seven years imprisonment).

(a) For heinous offences: a juvenile may be tried as an adult, irrespective of date of apprehension, based on their mental/physical capacity to commit an offence and an understanding of its consequences.

(b) For serious offences: a person who was a juvenile at the time of the offence may be tried as an adult only if they were apprehended when aged over 21 years.

4.4 The Bill establishes criminal penalties for various offences against children, such as assaulting, abandoning, abusing, or wilfully neglecting a child; employing a child for begging; selling or buying a child; and giving a child intoxicating or narcotic substances (which actually attracts a higher penalty than buying or selling a child).

4.5 The Bill also cuts ‘after care’ payments to children who leave institutional care, making this a one-off payment rather than a stipend for three years or until they reach 21 years of age.

5. Criticism of the Bill: impact on street youth
5.1 The Standing Committee has roundly criticised the Bill. The Secretary cited an increase in heinous offences committed by 16 to 18 year olds as justification for the adult trial amendments; however, this was based on the filing of First Information Reports, not convictions; in fact, the percentage of all juvenile crimes in India was only 1.2% of the total child population.\(^{109}\)

5.2 The Standing Committee also argued that trying some juvenile offenders as adults risks multiple breaches of the United Nations CRC and the Constitution, as well as overturning several Supreme Court judgments on children’s rights.\(^{110}\)

5.3 NGO Butterflies profiled juveniles in conflict with the legal system as working children from disturbed family backgrounds, associated with petty crime, and overwhelmingly from economically and socially backward sections of society.\(^{111}\) Almost 80% of juveniles accused of crimes belonged to families with an annual income of less than 50,000 Rupees and more than 50% did not complete primary school.\(^{112}\)


\(^{111}\) http://timesofindia.indiatimes.com/india/Most-juvenile-criminals-from-economically-weak-classes-have-disturbed-family-lives-Study/articleshow/47258153.cms

\(^{112}\) http://www.thehindu.com/opinion/op-ed/juvenile-justice-bill-a-bill-for-juvenile-injustice/article7143729.ece
Rather than dealing with these issues, the Bill instead ‘writes off’ these children, “denying them the opportunity to reform and a second chance at life.” Under these laws, street youth will be further exposed to criminalisation and imprisonment, especially given cuts to post-care payments which are likely to leave them financially vulnerable.

The table below provides a comparison between the Act as it stands now, and the proposed changes should they be passed.

**Key changes: comparison table**

<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>Treatment of juveniles</strong></td>
<td>All children under the age of 18 treated equally. Maximum penalty for juvenile in conflict with law is three years.</td>
<td>Juveniles aged between 16 and 18 committing serious or heinous offences could be tried as adults. However, there will be no death penalty or life imprisonment.</td>
</tr>
<tr>
<td><strong>Juvenile Justice Board</strong></td>
<td>Conducts inquiry and directs the juvenile to be placed in any fit institution for a period not exceeding three years.</td>
<td>Adds a preliminary inquiry, conducted in certain cases by the Juvenile Justice Board to determine whether a child is placed in a home or sent to Children’s Court to be tried as an adult.</td>
</tr>
<tr>
<td><strong>Child Welfare Committee</strong></td>
<td>Disposing of cases for children in need of care and protection; frequency of meetings not specified.</td>
<td>Functions are same as in the Act; training of members to be done within two months of JJB becoming law; Committee to meet at least 20 days in a month.</td>
</tr>
<tr>
<td><strong>Appeals</strong></td>
<td>Appeal to the Session Court within 30 days of Juvenile Justice Board order; further appeal to a High Court.</td>
<td>Appeal Juvenile Justice Board/Child Welfare Committee order within 30 days to Children’s Court, further High Court (District Magistrate for foster care, etc.).</td>
</tr>
<tr>
<td><strong>Adoption</strong></td>
<td>No provision for inter-country adoption in the Act; the Guidelines Governing the Adoption of Children, 2011 provide for inter-country adoption.</td>
<td>Inter-country adoption allowed if adoption cannot take place within the country, within 30 days of child being declared legally free for adoption.</td>
</tr>
<tr>
<td><strong>Foster care</strong></td>
<td>Temporary placement of a child to be given for adoption, with a family for a short/extended period of time; biological family may be allowed to visit.</td>
<td>Same as the Act. Adds new provision for monthly checks on foster family by the Child Welfare Committee.</td>
</tr>
<tr>
<td><strong>After-care</strong></td>
<td>Monetary and continued support for children after they leave special or One-time financial support to children leaving child care institutions after</td>
<td></td>
</tr>
</tbody>
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115 CWC is a Child Welfare Committee, which determines institutional care for children in need of care and protection. Children who are found to be in need of care and protection are to be brought before a CWC within 24 hours, and a Social Investigation Report is required to be prepared within 15 days. After assessing the report, the CWC may recommend that the child be sent to a children’s home or other facility for care, or declare them free for adoption or foster care. (as per PRS India)
6. **Street youth and the criminal law**

Homelessness is not a crime in India. However, conduct which is commonly connected with the lifestyles of homeless individuals is illegal. Consequently, homeless people, including youth, frequently come into contact with the criminal justice system.

### Public space offences

6.1 Street youth carry out many activities ordinarily carried out in private in public spaces.

6.2 Despite homelessness and vagrancy not being illegal per se, the criminalisation of behaviours typically associated with homelessness is a matter for the states in India. The following are examples of laws regulating behaviour in a public space that may have a detrimental impact on a person for mere fact that they are homeless:

(a) squatting on the pavement, which is tantamount to nuisance and which is criminally punishable;  

(b) behaving indecently in public (including sex acts), and

(c) encroaching on public land, which is criminally punishable and typically applies to persons who move from rural areas to the city to look for work and reside on public land (e.g. in slums and on pavements).

6.3 Perhaps the most common act associated with those living in poverty and homelessness is begging, which is rendered illegal in some areas. For example:

(a) begging is criminally punishable under the Bihar Prevention of Beggary Act 1951. According to this Act, begging is defined as soliciting alms in a public place and having no visible means of subsistence and wandering about or remaining in a public place; and

(b) begging is criminalised in Mumbai, where the Bombay Prevention of Begging Act 1959 defines begging as “being shabbily dressed, having no visible means of subsistence, wandering about in a public place, singing, dancing, fortune telling, performing or offering articles for sale can all be regarded as a pretence for soliciting alms, at the discretion of the police.”

6.4 Many public space offences occur on trains and in railway stations. Children’s offences in these areas mostly emerge from circumstances where a child is a runaway, has been abandoned, lost, or trafficked, abducted and escaped, or comes from nearby slums. Apart from begging, the kinds of activities carried out by children within railway premises range from small acts, like sweeping trains and selling cigarettes, to petty offences, to more serious conduct such as forming gangs and committing violent crime.

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117 is a criminal offence under the Bombay Police Act, 1951.


119 Cheng and Kumar, above n 1, 1.

120 section 2(i)(d) Bombay Prevention of Begging Act 1959
Prostitution

6.5 In considering amendments to the ITP, the Department-Related Parliamentary Standing Committee on Human Resource Development was informed of the prevalence of caste and religion based prostitution in some parts of the country, and that traffickers were clandestinely using this route to traffic the girls into prostitution.\(^\text{121}\)

6.6

6.7 As highlighted in Section A, children of the street (i.e. those who live and sleep on the streets) are particularly vulnerable and often engage in petty theft or prostitution for economic survival.\(^\text{122}\)

6.8 Figures for children engaged in prostitution in India’s metropolitan cities range from 270,000 to 400,000.\(^\text{123}\) Commercial sexual exploitation of boys has also been reported in Mumbai. The growth of sex-tourism has also been increasingly noted in India, catering primarily to demand from foreign tourists.

6.9 India has a range of laws dealing with the commercial sexual exploitation of children and child sexual abuse. Legal provisions against rape, molestation, sodomy, procuring minors, buying and selling minor girls, kidnapping and abduction are contained in the Code. In addition, special legislation, for example the ITP and the Karnataka Devadasi Prohibition Act deals with commercial sexual exploitation of women and children.\(^\text{124}\)

6.10 Prostitution is not illegal in India; however, certain related activities are punishable offences by imprisonment and financial penalty. The ITP\(^\text{125}\) is the legislation governing prostitution and contains several relevant offence provisions, including soliciting or seducing for the purposes of prostitution, and carrying on prostitution in a public place.

6.11 Due to the nature of these offences, it makes it extremely difficult to carry out prostitution in a legal manner, especially for homeless youth, thereby criminalising the activities of those who are forced into prostitution as a means of economic survival.

**Relevant legislation – Indian Penal Code**

6.12 The Code does not expressly provide an offence for prostitution. Rather, the Code provides various offence provisions for trafficking.

6.13 Sections 372 and 373 make it an offence to sell or buy a minor for purposes of prostitution; however, these offences are directed towards the acts of buying and selling rather than prostitution.

6.14 Prostitutes could potentially be prosecuted under other offence provisions for example, section 268 which refers to Public Nuisance.

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\(^{122}\) [http://www.childlineindia.org.in/street-children-india.htm](http://www.childlineindia.org.in/street-children-india.htm)


\(^{125}\) The Act is available here: [http://wcd.nic.in/act/itpa1956.htm](http://wcd.nic.in/act/itpa1956.htm)
Relevant legislation – other state laws

6.15 In many states, prostitutes are being prosecuted for minor offences such as indecent exposure and public nuisance under various state laws, including the Dehli Police Act and Mumbai Police Act.\textsuperscript{126}

Drug use among street children

6.16 Drug use and addiction among street children in India is a rapidly growing and undeniable epidemic. Street children starting from as young as five years old may experiment with drugs for a number of reasons including the stress of homelessness. The vast majority of these children have either never been to school or are school drop-outs. The effects of drug use often will lead to further illegal and adverse social activities such as robberies, prostitution, trafficking drugs and violence.

6.17 The most prevalent drugs used among street children in India are tobacco, alcohol, cannabis, opium and intravenous drug use (e.g. heroin). Many street youth in India also abuse inhalants on account of their accessibility and inexpensiveness. These inhalants include substances such as correction fluids, adhesive glue, petrol, gasoline and paint thinner.

6.18 India’s approach towards narcotic drugs and psychotropic substances is enshrined in Article 47 of the Constitution, which mandates that the state “shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health”.

6.19 The overarching anti-drug law of India is the Narcotic Drugs and Psychotropic Substances Act 1985 (the “NDPS Act”). The NDPS Act prohibits the cultivation of opium poppy, cannabis and coca plants and the production, manufacture, possession, sale, purchase, transport, warehousing, use, consumption, import, export or transhipment of any narcotic drug or psychotropic substance except for medical and scientific purposes and as per the rules or orders and conditions of any licence issued.

6.20 There have been various government initiatives established to curb illegal drug use, especially amongst homeless youths, including:

(a) \textit{Childline}, which is a 24 hour free emergency phone service for children. It was initiated by the Ministry of Social Justice and Empowerment in partnership with the Government of India, UNICEF, Department of Telecommunications, street and community youth, NGOs, academic institutions, the corporate sector and concerned individuals. It helps children with initial crisis intervention and then links them to long term services.\textsuperscript{127}

(b) The \textit{Salaam Balak Trust} in Delhi offers health programs for children at risk on the street and skills training including guidance on drug use and prevention. It is mostly needs-based and is a six month course.\textsuperscript{128}

(c) \textit{World Vision’s Guwahati Street Children Programme} to help children fighting substance abuse.\textsuperscript{129}

(d) \textit{De-Addiction Centres}, which focus on the youth of India and their problem with substance abuse.\textsuperscript{130}


\textsuperscript{127} \url{http://www.growingwell.com/childline.htm}

\textsuperscript{128} \url{https://www.railwaychildren.org.uk/media/11695/beyond-survival.pdf}, page 16.

\textsuperscript{129} \url{https://www.worldvision.in/?1426}

(e) Ratification of the CRC on 12 November 1992. Article 33 provides that a state shall take all appropriate measures to protect children from the illicit use of narcotic drugs and psychotropic substances.


(g) Creation of a trainer’s manual on drug use prevention, treatment and care for street children dealing with drug addiction by the National Institute of Social Defence. Although the manual has been effective in forming a unified structured approach to dealing with street children who are addicted to drugs, there is a lack of supervision and legal force which means that many people are uninformed and unable to provide the correct treatment for these addictions.

(h) Establishment of the Integrated Program for Street Children which seeks to prevent children staying on the streets in vulnerable conditions by seeking amongst other things, to protect them against abuse, provide health care and education.

6.21 These initiatives are a positive step towards tackling the issue of illicit drug use among homeless children in a non-legal manner. However, the implementation of these schemes and organisations remains a fundamental limitation. Despite being set-up with good intentions, generally they are unable to be facilitated and enforced due to lack of any formal supervision, reporting processes, proper training, or meaningful financial support.

7. Conclusion

7.1 Although homelessness is not a crime in India, it is clear that the operation of certain laws – be they express or neutral in nature – see the necessary survival strategies of street youth as criminal behaviour.

7.2 Many street children, who have very little if any parental guidance are forced to carry out their private lives in public spaces. This inevitably leads to criminalisation where issues such as prostitution, begging and drug use are prominent.

7.3 The juvenile justice system in India, which sees offenders who are minors diverted into an alternative process focussed on rehabilitation and counselling goes some way towards alleviating the negative effects of criminalisation. When combined with child welfare provisions, this may see slight increases in welfare services available to street youth. However, recent proposed reforms to the system, which are currently before Parliament, have the potential to further marginalise and criminalise the activities of some of India’s most disadvantaged young people.

D. Education and Employment

1. Introduction

1.1 The Constitution (86th Amendment) Act 2002 inserted Article 21-A in the Constitution to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right. Subsequently, to implement Article 21-A, the Right of Children to Free and Compulsory Education Act 2009 (the “RTE”) was enacted by the Government of India.

1.2 India is a complex nation, with too many demographics to be able to generalize. Education in India is the joint responsibility of the central and state governments. Each state deals with the common challenges in a different way. The RTE may be implemented with different regulations or bye-laws, the qualification criteria may be different. Each state government will also bring in their own schemes, or implement national schemes in their own way. This leads to differential access to education based on where you live in India, particularly where some states favour their permanent residents over the migrant population.

1.3 Provision of quality education in India is also an enormous quantitative challenge. The number of children attending school has gone up many-fold since the time of India’s Independence – increasing from around 19.2 million in 1950-51 to 113.8 million in 2000-01, according to the official census. However, problems persist.

1.4 The country has witnessed substantial increase in the number of primary and upper primary schools in recent years. As per Statistics of School Education, in 2009-10 there were approximately 1.5 million educational institutions in India. However, the numbers don’t account for the quality of the education, and various other factors that make it challenging to enrol and keep children in schools, such as:

(a) Social condition: extreme poverty, unavailability of one or both parents, necessity to earn a living, abuse etc.

(b) Lack of basic identification and residence proofs to satisfy the qualification criteria for government schemes.

(c) Lack of adequate number of educational institutions in the vast spreads of rural India.

(d) Inadequate infrastructure: schools are opened but not run, teachers are not available, schools lack basic infrastructure such as tables, chairs, toilets etc.

(e) Lack of funding and access to resources for the existing schools e.g. books may not be available for students who lack the funds to purchase them.

(f) Mindset of the older generation and various entrenched biases against education, particularly for girls.

1.5 As per the NFHS-3 (2005-06), nearly 11.8% children age 5-14 years works either for their own household or for somebody else. The very young children (age 5-7 years), both boys and girls, are mainly doing unpaid work for someone who is not a member of their household. The older boys age 12-14 are mainly engaged in paid work or family work, whereas girls in this age group are involved mainly in household chores or family work. Rural children age 5-14 years (12.9%) are more likely to be engaged in work than their urban counterparts (8.6%).

1.6 Child labour is a serious social evil in India, with very few safeguards available. Although there may be various provisions in the laws of India to safeguard children against physical and mental abuse, the implementation is low due to lack of awareness and support structure for the children.

1.7 Children who are not being educated are also vulnerable to various abuses. Apart from being obliged to work for their living from a very early age, they are vulnerable to physical violence, sexual abuse,
human trafficking and so on. Juvenile delinquency under Special and Local Laws (“SLL”) crimes has increased by 10.9% in 2011 as compared to 2010 as 2,837 cases of juvenile delinquency were reported in 2011.

2. **Right to Education Act and other access to education schemes.**

2.1 The RTE provides for the free and compulsory education for children of six to fourteen years in a neighbourhood school.

(a) ‘Compulsory’: the obligation of the appropriate government to provide free elementary education and ensure compulsory admission, attendance and completion of elementary education to every child in the six to fourteen age group.

(b) ‘Free’: no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education. It makes provisions for a non-admitted child to be admitted to an age-appropriate class. The expenses for the books, uniform, stationary for the child shall be borne by the government. In some states the governments have even implemented mid-day meals schemes, wherein the children are given food by the school at the expense of the government.

2.2 The RTE further defines ‘child belonging to a disadvantaged group’ as “a child belonging to Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economic, geographical, linguistic, gender or such other factor, as may be specified by the appropriate government, by notification.”

2.3 The RTE further defines ‘child belonging to weaker section’ as “a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate government by notification.”

2.4 As noted above, the RTE has left it to the States to lay down the specific details regarding the categories of the people to be included in the definition of child belonging to disadvantaged group and child belonging to weaker section, and various states have laid down the definition accordingly by local gazette notifications. See Appendix A for more detail of these definitions.

2.5 The States/Union Territories (“UTs”) of Andhra Pradesh, Assam, Daman and Diu, Karnataka, Meghalaya and Orissa specifically include street children within the ambit of the RTE. This scheme is applicable to Government-run schools (schools which are 100% sponsored by governments) and Private schools who have obtained land from the government at subsidized rates or other benefits from the Government. Such private schools are compulsorily directed to enrol at least 25% student from ‘disadvantaged groups’ and weaker sections’.

2.6 However, as per the law in states like Puducherry, the guardians of the children should have been residing in the state for a minimum period of 2 years before applying for admission under the RTE. This rule is extremely unfair against the children of migrant labourers (who work in Puducherry for six months and then go back to their farms) and children of street dwellers as well. Basic application of this rule would mean that any underprivileged family shifting to Delhi, whose children might have been studying in the village or else are be the minimum age of admission (6 years) would have to wait for a period of 2 years before getting their child admitted.

2.7 A similar rule was applicable in the State of Delhi as well, wherein a requirement of a minimum 3 years’ of residence in Delhi was compulsory for admission under the RTE, however, the rule has now been repealed by the Delhi Government. The status of the application of this rule in Puducherry is not confirmed.

2.8 We got in touch with the Delhi Government who confirmed that the street children are included by the Delhi Government under the term the ‘socially and economically backward’ group. However, some
States have not included the term ‘socially and economically weaker sections’ in their notifications. In addition to this, the documents required for admissions as prescribed by the various states are difficult to obtain for street children and their guardians.

3. Government schemes & policies to promote education

Education Guarantee Scheme, and Alternative and Innovative Education

3.1 The Centrally Sponsored Scheme of Non Formal Education (“NFE”) was introduced in 1979-80 on a pilot basis with a view to support the formal system in providing education to all children up to the age of 14 as stated in the Directive Principles of the Constitution.

3.2 Thus the NFE became an important component of the overall strategy for achievement of Universalisation of Elementary Education (“UEE”). The NFE scheme was revised in 1987-88. While the focus continued to be on 10 educationally backward states, it also included urban slums, hilly, tribal and desert areas and projects for working children in other states and UTs as well.

3.3 A major portion of the NFE scheme is run by the state governments which set up NFE centres. One component of this scheme provides grants to Voluntary Agencies (“VAs”) directly from the central government for running of NFE centres and a third is for projects of experimental innovative nature by VAs.

3.4 The current Status of the NFE Scheme is:
   (a) Being implemented in 25 States/UTs by the state governments and by 826 VAs.
   (b) 238,000 primary and 6,800 upper primary centres are presently sanctioned in the state sector.
   (c) 58,000 primary and 1,000 upper primary centres are run by VAs.
   (d) 41 experimental and innovative education projects are being implemented by VAs.
   (e) Total coverage of children under NFE scheme is about 7.4 million.

National Education Policy, 1986

3.5 The National Education Policy provides scope for equal access to education to all irrespective of class, caste, creed or gender. It envisages a common education structure and a common core curriculum throughout the country. It also sought to remove disparities by catering to the needs of women, scheduled caste, scheduled tribes, handicapped and other minority groups.

3.6 The policy emphasized mainly on the following points:
   (a) Universal enrolment up to 14 years with improved quality of education.
   (b) Free and compulsory education to all children up to 14 years of age.
   (c) To provide quality education, special schools under the name of Navodaya Vidhayalaya were opened in different parts of the country.
   (d) The National Literacy Mission to achieve total literacy in the age of 15 to 35 years. This campaign was the principle strategy to eradicate illiteracy in India.
   (e) Sarva Shiksha Abhiyan (discussed further below) to provide useful and relevant education for all children in the age group of 6 to 14.

3.7 The National Policy on Education (“NPE”) 1986 recognized that the school could not reach all children and a large and systematic programme of non-formal education would be required for school dropouts, for children from habitations without schools, working children and girls who could not attend whole day schools.
National Literacy Mission

3.8 The National Literacy Mission (“NLM”) launched in 1988 aimed at attaining a literacy rate of 75% by 2007. It is unclear how successful this has been but it aims to impart functional literacy to non-literate in the age group of 15-35 years. The Total Literacy Campaign is the principal strategy of the NLM for eradication of illiteracy. The Continuing Education Scheme provides a learning continuum to the efforts of the Total Literacy and Post-Literacy programmes.

3.9 In India, education from the age of 6 to 14 years is covered under Right to Education Act and education for people of an older age i.e. from the age of 15-35 years is covered under the NLM. However, the problems stopping people from accessing these facilities include, general disillusionment towards government policies, lack of general awareness about these policies and the problem with producing the documents/certificates required to gain access to these policies.

3.10 The NLM defines literacy as acquiring the skills of reading, writing and arithmetic and the ability to apply them to one’s day-to-day life.

3.11 The achievement of literacy implies:

(a) Becoming aware of the causes of deprivation and moving towards amelioration of their condition by participating in the process of development.

(b) Acquiring skills to improve their economic status and general well being.

(c) Absorbing values of national integration, conservation of environment, women’s equality, observance of small family norms, etc.

Sarva Siksha Abhiyan

3.12 The Sarva Siksha Abhiyan was launched in 2001 to ensure that all children in the age group of 6-14 years attend school and complete eight years of schooling by 2010. Important components of the scheme are the Education Guarantee Scheme and Alternative and Innovative Education, meant primarily for children where there is no formal school within a radius of one kilometre. The centrally-sponsored District Primary Education Programme launched in 1994, has so far opened more than 160,000 new schools, including almost 84,000 alternative schools.

3.13 International Literacy Day is celebrated each year on 8th September with the aim to highlight the importance of literacy to individuals, communities and societies.

Schemes to assist street youth seeking employment

3.14 Unemployment and underemployment are the two most glaring issues faced by the youth today, owing to the constant increase in their number and a lack of jobs to absorb the new entrants into the labour market. The Government of India has formulated schemes viz. NREGA (National Rural Employment Guarantee Act), TRYSEM (Training Rural Youth for Self Employment), PMEGP (Prime Minister’s Employment Generation Programme), Hunar se Rozgar Tak, PMRY (Prime Minister’s Rojgar Yojana), REGP (Rural Employment Generation Program) and SGSY (Swarnjayanti Gram Swarojgar Yojana) from time to time for addressing this gap. While these employment schemes do not directly address street youth, there are various benefits that can be gained from these schemes. For a detailed analysis of these schemes, please see Appendix B.

4. Laws affecting forced and harmful labour

4.1 Elimination of child labour has been of very serious concern to the Government of India. Child labour has been prohibited as part of the Indian Constitution, which promotes the ideology of free and compulsory education for all children between six to 14 years.
4.2 Bonded child labour is another phenomenon which is often hidden. Bonded labour means the employment of a person against a loan or debt or social obligation by the family of the child or the family as a whole. It is a form of slavery. Bonded child labourers are at very high risk of physical and sexual abuse and neglect sometimes leading to death. They often are psychologically and mentally disturbed and have not learnt many social or survival skills. Child bonded labour in India is mostly in the agricultural sector but has in recent times been moving into other sectors as well such as beedi-rolling, brick kilns, carpet weaving, commercial sexual exploitation, construction, fireworks and matches factories, hotels, hybrid cottonseed production, leather, mines, quarries, silk, and synthetic gems.

5. Current legal position

5.1 The main law affecting child labour in India is The Child Labour (Prohibition and Regulation) Act 1986 ("CLA") which aims to prohibit the employment of children in certain occupations and regulate the working conditions of children.

5.2 The CLA defines a child as someone under 14 years of age, and prohibits a child from being employed in certain hazardous industries specifically identified by the CLA, including: transportation, cinder picking, railway construction, automobile workshops and mines. It also prohibits any child from being employed in a workshop where certain specified processes are conducted, such as carpet weaving, cement manufacturing, construction, wool cleaning, tanning, and manufacture of toxic materials.

5.3 Under the CLA, children are not to work for more than three hours without a break of at least one hour, are not permitted to work between 7pm and 8am, and are entitled to one day off each week. Children are not to be required to work overtime or in more than one establishment per day.

5.4 A register must be maintained by employers of children and be available for inspection by a government inspector at all times. The register must contain the name and date of birth of every child employed at the establishment, the hours and period of work relating to each child and the nature of work of each child. Failure to maintain a register or making a false entry on the register is punishable by one month imprisonment and/or a fine of up to 10,000 Rupees. If there is a dispute about the age of any child and no birth certificate is available, the government inspector has the power to refer the matter to a prescribed medical authority.

5.5 Employment of a child in a prohibited industry/occupation exposes the employer to imprisonment of three months to one year and/or a fine of 10,000-20,000 Rupees. Repeat offenders are liable to imprisonment for six months to two years.

5.6 In addition to CLA, there are a few other laws affecting child labour, including:

- **The Constitution** - Article 24 prohibits any child below the age of fourteen to be employed in work in any factory or mine or engaged in any other hazardous employment.

- **The Juvenile Justice (Care and Protection) of Children Act of 2000** - makes it a crime, punishable with a prison term, for anyone to procure or employ a child in any hazardous employment or in bondage.

- **Bonded Labour System (Abolition) Act of 1976** - prohibits solicitation or use of bonded labour including children.

- **Industry legislation** - there are several laws that affect specific industries and in particular, the age that a child must be before they can be employed in that industry.

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135 CLA, section 11
136 CLA, section 14
• The Factories Act 1948: requires a child to be over 14 years old before he/she can work in any factory, and also places rules on who, when and how long children aged between 15-18 can be employed;

• The Mines Act 1952: prohibits the employment of children under 18 in a mine;

• The Beedi and Cigar Workers (Conditions of Employment) Act 1966: prohibits the employment of children under 14 and the employment of children aged 14-18 between 7pm and 6am;

• The Shops and Commercial Establishment Act: prohibits the employment of children under 14 (even if she/he is a family member of the employer); and


6. Other initiatives

6.1 India adopted the National Policy on Children Resolution in August 1974, which promotes the concept of free education as well as measures to be taken to protect children against neglect, cruelty and exploitation.

6.2 The National Policy on Child Labour, formulated in 1987, seeks to adopt a gradual and sequential approach with a focus on rehabilitation of children working in hazardous occupations. It envisions strict enforcement of Indian laws on child labour combined with development programs to address the root causes of child labour.

6.3 An international programme for the elimination of child labour has also been implemented in India by the International Labour Organization. Under this programme, financial assistance, awareness-creation, rehabilitation and education are provided to target the elimination of child labour.

6.4 The Scheme for Working Children in Need of Care and Protection provides working children with essential educational services such as non-formal education, and vocational training. It applies to children under 14 and prohibits them from working in specified occupations including catering at railway establishments, construction work on the railway or anywhere near the tracks, plastics factories, automobile garages, etc.
E. Cross Borders and Conflict

1. Why do youth cross borders into India?

1.1 Youth may cross borders due to violent conflict and natural disasters in their home countries, to combat poverty, as trafficking victims, to avoid being trafficked, and for many other reasons. They may arrive as victims with disabilities and emergency needs, as economic refugees seeking education and employment, or as trafficked victims seeking rescue and rehabilitation.

1.2 These youth should have certain guarantees of family care, support, safety and stability. The nature of these guarantees, however, will depend upon the reason for their movement across borders into India. For example, it will not necessarily be appropriate for all such youth to receive family care; a trafficked victim may prefer to seek repatriation to their home country. It is therefore appropriate to structure India’s response to this category of youth with respect to their cause for movement.

1.3 For the purpose of considering the key legal rights needed for this particular class of homeless youth, we have focussed on the two potential reasons for movement across borders - namely, (1) political and environmental refugees, and (2) trafficking victims (including those crossing borders for the avoidance of trafficking), and then considered what level of legal protection currently exists for these classes.

2. Trafficking

What is the nature of the problem?

2.1 India is a source, transit, and destination country for human trafficking. Not just limited to children, the reasons for trafficking are largely for commercial sexual exploitation, bonded labour, and even for marriage due to the decreasing sex ratio in India.

2.2 Victims of human trafficking may have initially had legitimate reasons for being trafficked across borders - e.g. as an economic refugee, or to escape a natural disaster. The trafficker may have deceived the victim with an empty promise of future employment or some other enticement. Alternatively, the victim may simply be within a vulnerable group of people within their home country, e.g. street youth, and kidnapped. Whatever the reason which led to being a victim of trafficking, there are certain guarantees which should be afforded to victims.

2.3 According to the US Department of State, only 10% of human trafficking in India is international, while 90% is interstate trafficking of those from the most disadvantaged social strata. Child Line India estimates that “every year approximately 6,000 women, girls and boys are trafficked [across] from Bangladesh, India and Pakistan...for cheap labour and prostitution...”.

2.4 Research indicates that the highest volume of movement is across the border from Nepal and Bangladesh into India, due to the porous and very long nature of the Indian borders with these countries. This allows trafficking to occur more easily.

2.5 Whilst victims of trafficking are unlikely to be homeless (because they are being used for sexual exploitation or bonded labour, for example), homelessness can become an issue once rescued, or should the traffickers’ plans unravel and the victims be abandoned. Further, homelessness within their home country could be the very reason which led to the person being trafficked in the first place.

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139 Childline India, ‘Cross Border trafficking to India’, http://www.childlineindia.org.in/1098/Cross-Border-trafficking-to-India.htm
140 United Nations Office on Drugs and Crime, ‘Responses to Human Trafficking in Bangladesh, India, Nepal and Sri Lanka’, 2011, 26
What guarantees should trafficked victims have?

2.6 Every cross-border trafficked victim should be guaranteed four key things:
   (a) rescue;
   (b) rehabilitation;
   (c) repatriation; and
   (d) justice.

What laws in India currently exist to offer that protection?

2.7 Trafficking is prohibited in the Constitution as a Fundamental Right; with this prohibition implemented through the ITPA.\textsuperscript{141} See Appendix C for an overview of the relevant key provisions of the Constitution.

2.8 There are also a number of other miscellaneous laws (also covered in Appendix C) relevant to trafficking, covering aspects from buying/selling of minors for prostitution, to the use of children as bonded labour.\textsuperscript{142}

2.9 Case law also provides guidance as to how the courts in India interpret the law; although these cases are largely concerned with domestic rather than cross-border trafficking. The principles laid down by the High Court and the Supreme Court deal with three main concerns: victim’s rights, giving appropriate directions to Government, and special protection for the child.\textsuperscript{143}

How successful is the legal framework in India?

2.10 In 2011, the UN Office on Drugs and Crime issued a report titled, ‘Responses to Human Trafficking in Bangladesh, India, Nepal and Sri Lanka - Legal and Policy Review’. This report considered the gaps in the legal framework of trafficking in India and also included some key recommendations.

2.11 The US Department of State, in their 2014 ‘Trafficking in Persons Report on India’\textsuperscript{144} also identified a number of gaps in India’s approach towards trafficking and considered a number of recommendations. Notably, this report goes on to say that the Government of India does not fully comply with the minimum standards for the elimination of trafficking, but is making significant efforts to do so.

2.12 It is also notable that while section 51A of the Constitution obliges all citizens to renounce practices derogatory to the dignity of women, it does not lay down the same protection in the case of children. In the same vein, no trafficking cases have come before the court on the violation of this fundamental duty.

2.13 Of further note is the fact that the ITPA deals only with the trafficking of girls and women for prostitution, and does not cover the trafficking of boys for sexual purposes. As the law stands today, the only legal provision that can be invoked to combat trafficking of boys is section 377 of the Code, which deals with “unnatural offences” and is covered in further detail in the Minority Populations chapter below.

2.14 Furthermore, ITPA is limited in that it defines trafficking only in terms of trafficking for prostitution. There is no comprehensive legal framework to cover trafficking of children for labour, begging, or pornography etc. It is not just the “moving” of children from one place to another that is relevant, it is also the breach of trust and the pain, agony and trauma suffered by the victim both while being trafficked and thereafter. A legal framework is needed that addresses all of these concerns.

\textsuperscript{141} United Nations Office on Drugs and Crime, ‘Responses to Human Trafficking in Bangladesh, India, Nepal and Sri Lanka’, 2011, 27

\textsuperscript{142} Ibid at 29

\textsuperscript{143} Ibid at 32-33

\textsuperscript{144} U.S. Department of State, '2014 Trafficking in Persons Report - India', http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226740.htm
2.15 All other forms of trafficking other than prostitution are currently covered under the Code, which has no specific provision on trafficking but instead covers kidnapping and abduction, procuration and importation of minor girls for illicit intercourse, selling and buying of girls for prostitution, slavery, and forced labour. The Code does not contain any provision for abetment to trafficking, or attempt to trafficking, in any form whatsoever.

2.16 Although the National Plan of Action 1992 deals with children in prostitution and children of prostitutes in its section concerning children in especially difficult circumstances, like most other government documents it does not recognise child trafficking per se as an issue for action.

Recommendations

2.17 Drawing from these resources, the current gaps in the legal framework in India can be summarised as follows:

(a) gender sensitivity and equal implementation across genders;
(b) lack of uniform definition of who is a child/minor;
(c) trafficking is not seen as an organised crime, and therefore provisions relevant to organised crime are not of assistance;
(d) cooperation mechanisms are ad hoc or non-existent, particularly in relation to cross-border trafficking: e.g. legal assistance, providing information, transfer of sentenced persons, and joint investigations;
(e) lack of consistency: efforts towards the protection of trafficking victims and prosecution of alleged traffickers is uneven among states and municipalities. While some states secured serious penalties for convicted traffickers, the complicity of government officials enables exploitation by traffickers continue;
(f) no positive duty upon states to provide sufficient shelters or for rehabilitation or rescue; and
(g) creating a conducive atmosphere for victims to testify, i.e. the absence of any witness protection programs.

2.18 Key recommendations include:

(a) strengthening and widening of the ITPA framework;
(b) consistent use of the term minor or child across statutes, which should comply with the definition under the UN CRC (i.e. every person below the age of 18);
(c) prosecution of traffickers and officials allegedly complicit in trafficking;
(d) sensitize law enforcement officials to the issues of human trafficking and continuing education on law reform;
(e) cease the penalization of the victims;
(f) establish additional Anti-Human Trafficking Units in source areas to address all forms of trafficking;
(g) hire additional female police officers;
(h) coordinate standard operating procedures among police and child welfare departments for the rescue, repatriation and rehabilitation of trafficked children, particularly where the children were originally homeless in their home country and formal identification may be absent;

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(i) regular training of staff working with victims;
(j) increase prevention efforts;
(k) improve protections for trafficking victims who testify against their suspected traffickers; and
(l) increased international coordination to address cross-border issues.

Case studies

2.19 The following success stories illustrate what can be achieved in addressing cross-border trafficking with the collaboration of governments, authorities, NGOs and others:

(a) International Justice Mission (“IJM”)

In January 2015, six young women trafficked from Nepal to India were set free from multiple brothels in Kolkata, India. IJM together with the entire detective force of 52 officers and three other NGOs, were involved in the complex operation. The operation came about because the Nepali government wrote a letter in 2014 urging Indian authorities to address the epidemic of trafficking. According to the Family Planning Association of Nepal, there are about 200,000 Nepali girls and women working in Indian brothels.\(^{146}\)

(b) Childline India

Three children from Bangladesh were found by the Railway Police in Bhubaneswar and handed over to Childline. The two girls were kidnapped and taken across the border to Bhubaneswar with the intention of being sold to a brothel, while the boy was forcefully put to work in a factory in Chennai where he fled and managed to get himself to Bhubaneswar. Through the efforts of Childline and with the help of various officials working with the government, relevant travel permits and authorisations were secured allowing for the repatriation of these children back to their homes.\(^{147}\)

(c) Ashoka Innovators for the Public

Hasina Kharbhiih created the nationally and internationally acknowledged Meghalaya Model, a comprehensive tracking system that successfully brings together the state government, security agencies, legal groups, media, and citizen organizations to combat the cross-border trafficking of children in the porous North-eastern states of India. The Meghalaya Model combat child trafficking in North-east India as a single comprehensive strategic plan, to be adopted by all state agencies and citizen organizations in the region and on the nearby crossings to Bhutan, China, Myanmar, Thailand, and Bangladesh.

The model enables government and citizen groups to jointly implement the “three Ps” (prevention, protection, and prosecution) and the “three Rs” (rescue, relief, and rehabilitation). The different actors communicate and share data more efficiently, and use the same training manuals, standard operating procedures, and public-awareness campaigns. Pilot testing of the Meghalaya model has been verified as effective and it is one of the best practice models included in the South Asian Regional Initiative/Equity study by Management System International in Washington and supported by USAID for replication in South East Asia.


\(^{147}\) Childline, 'Cross Border trafficking to India', [http://www.childlineindia.org.in/1098/Cross-Border-trafficking-to-India.htm](http://www.childlineindia.org.in/1098/Cross-Border-trafficking-to-India.htm)
3. Political refugees

3.1 India has a population of over 200,000 refugees. It is unclear how many of these are children and, of those that are children, how many become homeless. The status of refugees in India is governed mainly by political and administrative decisions. This has resulted in varying treatment to different groups of refugees; while some groups are granted a range of benefits, including the ability to be legally employed, others are criminalized.

3.2 The UNHCR works towards the recognition of refugees across the world, including India, and offers protection to these refugees. Below are some of the categories of political refugees in India:

Tibetan

3.3 These refugees fled to India as a result of Chinese oppression and the fleeing of the Dalai Lama. Those who entered India in the 1950s and 1960s were accorded refugee status and issued a registration certificate. Children of these refugees who are born in India are required to be registered at the age of 18. Their population is scattered all over India, particularly in the North.

3.4 In February 2014, the Election Commission of India ordered State Commissions to include all people of Tibetan origin born in India between 1950 and 1987 on the electoral rolls, thus giving a chance to children of Tibetan refugees to vote in India. This was pursuant to two High Court orders in 2011 and 2013, recognizing such refugees’ right of citizenship.

Sri Lankan

3.5 The Sri Lankan Tamils were forced to leave their country due to the constant conflict between the Sri Lankan armed forces and the Liberation Tigers of Tamil Eelam. Regular blasts, air strikes, torture and rape forced many Tamils to flee to India for safety. They live largely in Tamil Nadu in refugee camps, are recognized by the Indian government as refugees, and are accordingly granted protection, basic medical care, education, and food grain.

3.6 Digvijay Mote v. Government of India and others was a public litigation case filed in Karnataka with respect to a school established exclusively for refugee children from Sri Lanka. This boarding school housed over 250 children, either orphaned or with only one parent in a refugee camp, and ran into financial troubles due to the withdrawal of State assistance by the State. It was also unable to pay its electricity bills, with its electric supply was discontinued. The Karnataka High Court issued a notice to the government to resume aid and to the electricity board to resume supply to the school.

Bhutanese

3.7 Thousands of ethnic Nepalese who migrated to Bhutan were rendered ‘illegal residents’ when the Citizenship Act 1985 was enacted in Bhutan, and their expulsion began soon after. Many such Nepalese were forced to cross over into India, but India did not accept them and they went on to live in refugee camps at the Nepal border. There are now thousands of such refugees living in India who have not been given Refugee status by the Government. A reciprocal arrangement between Bhutan and India grants citizens equal treatment and privileges and as a result of this, recognition of the ethnic Nepalese Bhutanese as refugees is legally difficult.

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148 UNHCR Global Appeal 2015 update [http://www.unhcr.org/5461e60a54d.html](http://www.unhcr.org/5461e60a54d.html)
149 Namgyal Dolkar vs Government Of India, Ministry Of External Affairs, order dated 22 December, 2010, Delhi High Court, W.P.(C) 12179/2009
150 Tenzin Choephag Ling Rinpoche V Union Of India, Writ Petition No.15437/2013 (Gm-Pass), High Court Of Karnataka At Bangalore, Order Dated 7th August, 2013
151 W.A.No. 354/1994, Karnataka High Court
152 Article 5, India-Bhutan Friendship Treaty 2007
Hindu Pakistani

3.8 After the partition of India, Muslims from India migrated to Pakistan, resulting in communal tension in Pakistan and causing Hindu Pakistanis to flee to India. Further, the demolition of the Babri Masjid resulted in more communal tension and more Hindu Pakistanis who sought refuge in India. The Constitution and the Indian Citizenship Act 1955 allow persons who were born or whose parents were born in undivided India to apply for Indian citizenship. There are also specific rules\(^\text{153}\) regarding granting citizenship to Pakistanis in Gujarat and Rajasthan.

Burmese

3.9 Many Burmese crossed the border into India to escape the Burmese Government and military. Torture, forced labour, killings and rape were the major causes for this fleeing. Burmese refugees who are in New Delhi are recognized and protected by the UNHCR and are given access to education. However, documentation is not always available for these children, posing a problem for admission to schools. Furthermore, Hindi being the medium of instruction in government schools is a barrier to these children who are not familiar with the language.

3.10 The High Court of Guwahati, Assam, in *Khy Hoon V. State of Manipur*\(^\text{154}\), stayed a deportation order against eight Burmese, including children, and held that they should be allowed to travel to New Delhi to seek refugee status from the UNHCR.

Somali

3.11 The civil war resulted in human rights violations, and thousands fled from Somalia to various places, including India. A large number of the Somali community in India consists of unaccompanied minors and young adults in the southern city of Hyderabad. Although the Somali refugees in Delhi have access to the UNHCR and can apply for recognition and protection, there is no such protection in Hyderabad and these minor and young adults are often unable to make a living.

Afghan

3.12 A vast majority of the Afghan population in India are Hindus or Sikhs who have fled Afghanistan due to fear of religious persecution. Although India does not officially recognize these persons as refugees, the UNHCR recognizes and protects them. Some Afghan refugees have been granted valid residence permits by the Indian Government, which allows them to stay in India legally.

3.13 The Indian Government has been taking steps towards granting citizenship to Pakistani and Afghan (“Minority Community”) nationals who entered India before 31st December 2009, and has in particular made it easier for such Minority Community children to gain citizenship.\(^\text{155}\) Now, children who entered India on the basis of their parent’s passport, can apply for citizenship without a passport after their stay in India has been regularized by the FRO.\(^\text{156}\)

3.14 The judiciary in India has, in various cases, upheld the rights of refugees, particularly refugee children. The Supreme Court, in *Collector of 24 Parganas v. Lalith Mohan Mullick*\(^\text{157}\) held that acquisition of private property for the construction of a hospital for refugee children was valid, as such construction fell under the purview of ‘public purpose’ for which private property could be acquired or requisitioned.

3.15 The Supreme Court also established the rights of citizenship for Chakma (a Tibeto-Burman ethnic group) refugee children born in Arunachal Pradesh, and called the refusal of the Deputy Collector to

\(^{153}\) Citizenship Amendment Rules 2004
\(^{154}\) W.P. No. 515/1990, Guwahati High Court
\(^{156}\) Foreigners Registration Office
\(^{157}\) (1986) 2 SCC 742
forward applications for citizenship of Chakmas under Section 5 of the Citizenship Act, 1955, a denial of their constitutional and statutory rights. The children of the Chakma refugees who were born in India were entitled to Indian citizenship by birth under Section 3 of the Citizenship Act, 1955 (before it was amended in 1987 requiring one parent to be an Indian citizen) and also sought to be registered under Section 5 of that Act.

4. Environmental refugees

4.1 The status of persons displaced due to environmental changes or disasters remains undefined, primarily due to the lack of consensus surrounding the term’s definition.

4.2 The concept of “environmental refugee” refers to “people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardizes their existence and/or seriously affects the quality of their life. In other words, environmental refugees are persons who must leave their homelands due to environmental degradation or natural disasters - whether they cross an international border or whether they migrate internally.

4.3 Environmental stressors may cause two types of migration in India. Firstly, factors such as drought, soil erosion, desertification, sea level rise or water scarcity can cause displacement within the country. Secondly, climate change and other natural disasters can result in migration from neighbouring countries. A recent example of this occurred following the earthquake in Nepal in April 2015.

4.4 Article 1A of the 1951 Convention Relating to the Status of Refugees defines refugees based on two main considerations:

(a) they must be outside their country of origin; and

(b) they are forced to move due to “fear of being persecuted for reasons of race, religion, nationality, membership of a particular social or political opinion”.

4.5 Under this international legal definition, then, there is currently no legal basis for such “environmental refugees” for two key reasons:

(a) The term includes persons who move within their own country, and therefore seems to contradict the definition of “refugee” under Article 1A(a), which requires that “refugees” be outside their country of origin.

(b) Being forced to move due to environmental conditions is not listed as a reason for granting refugee status under Article 1A(b), and therefore does not constitute a basis for refugee status.

4.6 As a result of this non-applicable legal framework, an institutional gap is created. At present, there is no national or international institution responsible for environmental refugees. While many of those displaced by climate change are ‘internally displaced people’ (“IDPs”), the UNHCR only deals with IDPs who are forced to move as result of conflict.

5. Economic refugees / to combat poverty

5.1 Whilst it is understood that another driver behind the cross-border movement of youth into India is to seek education and employment, it is challenging to locate specific information addressing this particular issue in isolation of others.

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158 Citizenship by registration
159 (1996) 1 SCC 138
5.2 Combating poverty, however, is very much a live issue within India, and a number of programs have been set up to respond to this. See Appendix D for a brief overview of some of these domestic programs.
F. Minority Populations Case studies: LGBTQ Youth and Children living with HIV

The two case studies below highlight the disproportional effect of homelessness on certain minority populations; LGBTQ street children, particularly transgender children, and children living with HIV/AIDS.

1. Transgender in India:

1.1 For a country that prides itself on its conservatism, a notable number of its population - nearly half a million people - identified as being “transgender” in the first official census in 2014.\(^{160}\) There is limited data on the estimated transgender population in India, however, anecdotal evidence places this figure between half a million and two million.\(^{161}\)

1.2 A wide range of transgender identities exist in Indian culture, including Hijras,\(^{162}\) Aravanis, Kothis, Jogtas/Jogappas and Shiv-Shaktis.\(^{163}\) Under Indian law, transgender is an umbrella term, encompassing any individual whose sexual identity transgresses from social gender norms, regardless of gender or the stage of transformation.\(^{164}\)

1.3 Historically, the treatment of transgender people in India has been varied. While such individuals often live on the fringes of society, encumbered in poverty and resorting to prostitution as a means of survival, the group has garnered respect over the years.\(^{165}\) Inclusion for the transgender population has increased, as government jobs and colleges now have quotas reserved for transgender individuals.\(^{166}\) In January this year, the Madhu Bai Kinnar, was the first transgender woman to be voted mayor of Chhattisgarh, beating her rival by over 4,500 votes.\(^{167}\)

2. LGBTQ Street Children

2.1 Of the 500,000 people identifying as “transgender” in India’s first census, 55,000 people were under the age of six, which demonstrates the resounding presence of LGBTQ youth in India.\(^{168}\) These figures come with a caveat - since the census does not capture the entire population of the country, the actual figures may be higher. Most LGBTQ youth who find themselves on the street arrive there under duress, to earn money, or have run away from home to escape familial pressures.\(^{169}\) Street youth who are

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\(^{160}\) Rajesh Sampath, *India has outlawed homosexuality, But its better to be transgender there than in the U.S.*, The Washington Post (Jan. 29, 2015, ).


\(^{162}\) Dr.Venkatesan Chakrapani, *Hijras/Transgender Women in India: HIV, Human Rights and Social Exclusion* (Dec., 2010), [hereinafter Chakrapani].

\(^{163}\) Ibid.

\(^{164}\) Ibid.

\(^{165}\) Ibid.

\(^{166}\) Ibid.

\(^{167}\) Ibid.

\(^{168}\) Ibid.

\(^{169}\) Ibid.

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accepted into the fold of hijra society must pledge all their earnings to the guru of the group.\textsuperscript{170} They must then undergo a difficult physical transformation, where the male form is cast off, unwanted body hair is individually plucked from the body, and body-altering hormone treatments are issued.\textsuperscript{171} The initiation into life as a hijra is an expensive process, which forces transgender individuals to resort to prostitution as a means of paying off these debts and earning a livelihood.

2.2 The transgender society in India, children included, is ridiculed for being different, even by the police, who threaten such individuals with physical and verbal abuse, forced sex, and extortion.\textsuperscript{172} Most transgender youth face challenges in coming to terms with their gender identity or expression, often experiencing emotions of shame, fear, and loneliness, while also facing difficulty in adapting to a role that stands in complete opposition to societal standards.\textsuperscript{173}

2.3 There is also a lack of specific social welfare schemes to help such youth overcome the unique problems they face.\textsuperscript{174} Thus, LGBTQ street youth lack the tools to uplift themselves from their circumstances. Without education, these youth cannot learn the inadequacy of their protections as hijras, and the unfair illegality of their acts. Rather, they continue to imitate the gurus of their group, without ever questioning their status or actions. Without employment, such youth are denied access to any means of a livelihood and are forced into prostitution, theft and kidnapping as a means to survive. Furthermore, without any access to healthcare, many LGBTQ street youth find themselves inflicted with various diseases, often venereal, as a consequence of their prostitution. It is evident that a stronger support system must be created for LGBTQ street youth.

3. Laws affecting transgender community

3.1 The legal exclusion of transgender individuals from society in India has historical precedent. This practice began as early as 1871, when the British Raj passed the Criminal Tribes Act, providing that certain tribes and communities are “addicted to the systematic commission of non-bailable offenses.”\textsuperscript{175} Thus, certain tribes were considered criminal from birth, and this criminality passed genetically from generation to generation, allowing no escape from the classification.\textsuperscript{176} The Criminal Tribes Act was amended in 1897, providing that the term hijra included “all members of the male sex who admit themselves or on medical inspection, clearly appear to be impotent.”\textsuperscript{177} Local governments kept a register delineating the names and residences of all hijras who were “reasonably suspected of kidnapping or castrating children,” or of committing offences under section 377 of the Code.\textsuperscript{178} Further, any hijras so registered who dressed as women in a public street, danced or played music, or took part in any public exhibition, could be arrested without a warrant.\textsuperscript{179}

3.2 Fortunately, treatment of the transgender community has improved since 1897, but the current landscape of laws affecting the LGBTQ population in India is highly inconsistent and problematic. On the one hand, section 377 of the Code, entitled “Unnatural offenses,” criminalizes voluntary “carnal

\begin{footnotes}
\item[170] McCarthy, supra note 2
\item[171] Ibid.
\item[172] Chakrapani, supra note 3
\item[173] Ibid.
\item[174] See Chakrapani, supra note 3[except some rare cases of providing land for Aravanis in Tamil Nadu. Only the Department of Social Welfare in the state of Tamil Nadu has recently established ‘Aravanigal/Transgender Women Welfare Board’ to address the social welfare issues of Aravanis/Hijras. No other state has replicated this initiative so far.]
\item[175] Ibid.
\item[176] Ibid.
\item[177] Ibid.
\item[178] Ibid.
\item[179] Ibid.
\end{footnotes}
intercourse,” an act described as being “against the order of nature.”

Over the years, this has come to include all manner of “immoral acts,” lacking a precise definition. The penalty for such an offence is imprisonment for a period of anywhere from 10 years to life.

This anachronistic section of the Code, passed during the British Raj in 1860, was reinstated by the Supreme Court in 2009 despite opposition from the LGBTQ community.

3.3 On the other hand, the Indian transgender population saw a revolutionary ruling last year, where the Supreme Court extended legal rights to the country’s transgender community, and directed authorities to recognize transgender persons’ self-identification as male, female or a “third gender.” The court grounded its opinion on ancient Hindu scriptures, citing verses from the Mahabharata and Ramayana, where mention of same-sex relationships is made. The 2012 suit was instituted by a prominent leader of the transgender community, Laxmi Narayan Tripathi, who sought equal rights for her community. For many years, the transgender population has been marginalized and functioned without a legal status, but the Supreme Court finally conceded that it is “the right of every human being to choose their gender.”

This ruling brought the transgender population into the mainstream, with quotas for jobs and education have now been set aside for the group, and other basic rights including passports, voter cards and driving licenses, also being extended to the group.

4. Other Positive Steps

4.1 Along with the evolving legal landscape surrounding LGBTQ individuals, other organizations have also contributed to strengthening the transgender community. UNDP India and ARTICLE 39 (a division of the Center for Legal Aid and Rights), convened four Access to Justice and Social Inclusion Public Hearings to increase awareness and accountability towards transgender communities in India. If these programs are to continue in the future, it would be important to integrate street youth into such exercises, since many hijra youth would benefit from such inclusion.

4.2 There have also been significant developments in the Indian state of Tamil Nadu concerning the LGBTQ community. The state has set up a Transgender Welfare Board, having a budget of 50 Lakh Rupees (approximately $100,000) per year. The Board’s mandate is to examine the problems faced by the transgender community and to formulate and execute welfare schemes for its betterment. This includes extending grants to transgender people to start businesses, such as fruit or vegetable shops. Tamil Nadu also offers special ration cards for hijra, and admission to transgender government colleges.

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181 Ibid.

182 Ibid.


185 Ibid.

186 Ibid.


189 Ibid.


191 Ibid.
4.3 Furthermore, while subsidized gender affirmation surgeries are generally unavailable in Asian countries, the Indian state of Tamil Nadu offers such a program to its citizens.\textsuperscript{192} This demonstrates a shift in the attitude towards the transgender community in India, and is certainly a step in the right direction. However, it is unclear whether the efforts of this Board currently reach transgender street youth. Given the high prevalence of transgender youth on the streets, these initiatives will have a broader reach and will be more effective if they are extended to street children as well. Another concern is that Tamil Nadu is the only state that reimburses the cost of gender affirmation surgery, with the Indian Medical Counsel not yet adopting any guidelines.\textsuperscript{193} Consequentially, there is a dearth of counselling services associated with such gender affirmation surgery.\textsuperscript{194}

5. Conclusion

5.1 Despite the initiatives described above, as well as the Supreme Court’s legal instatement of a “third gender,” cases of harassment and violence against transgender people continue to be reported.\textsuperscript{195} The murder of transgender people continues without documentation, with an alarming amount of this violence stemming from the police who harass transgender people involved in sex work.\textsuperscript{196} There have been confirmed cases of violence in states like Karnataka.\textsuperscript{197} Occasionally, the perpetrators of such violence benefit from a culture of impunity surrounding their acts, which in some cases appears to be sponsored by the government.\textsuperscript{198}

5.2 Since hijras are subjected to arbitrary detention and sexual harassment by the police, it is imperative that the police and judiciary are sensitized towards and educated on the LGBTQ community.\textsuperscript{199} Guidelines regarding police conduct towards transgender people must also be adopted to prevent such instances of discrimination and violence.\textsuperscript{200}

5.3 Other kinds of support systems and schemes must also be instituted, specifically aimed at street youth. Such programs can focus on the education of transgender street youth, and help integrate them into society without facing discrimination. Counselling must be a focus of these efforts, so that transgender street youth are able to discuss the trials they face in an open dialogue.

5.4 It is also clear that the Indian laws are highly incongruous. While transgender individuals have won official legal status, any protection they may have gained is redundant if \textit{“their gender identity becomes illegal when expressed in a sexual context.”}\textsuperscript{201} For Indian LGBTQ street youth, who already have a number of societal and individual struggles to overcome, the legal environment is confusing, if not oxymoronic. Thus, to protect LGBTQ street youth from the overwhelming problems they face, along with the establishment of a support system, these conflicting laws must also be reconciled.

6. Children affected by and vulnerable to HIV

6.1 Over 35% of AIDS cases reported in India are below 25 years of age, and 50% of new infections are between 15 and 24 years old. The current HIV/AIDS programmes are reaching only 15% of young people and 17% of high-risk groups such as sex workers, men who have sex with men and injecting drug users.\textsuperscript{202}
drug users. Less than one quarter of young people have accurate information on how to protect themselves from HIV which, coupled with profound gender inequalities, make change in sexual attitudes and practices very difficult. It is estimated that there are 200 million young people in high prevalence and vulnerable districts that need access to information, skills and services to reduce their vulnerability to HIV infection. Under the National Pediatric HIV/AIDS Initiative, 47,784 Children living with HIV/AIDS ("CLHIV") had been registered for HIV care at ART centers, and 16,447 CLHIV received free ART (August 2009).

6.2 The most accepted definition (UNICEF, 2006) of children affected by and vulnerable to HIV/AIDS in India includes:

(a) children who are HIV positive;
(b) children who are living with a parent, caregiver or other family member who has HIV or AIDS or has died from AIDS related causes (affected children); and
(c) street children, trafficked children, children who are injecting drug users, children in care and protection institutions, children of sex workers, children in conflict with the law, children with a physical or mental disability, children at work (out of home) and children facing gender based risks (vulnerable children).

6.3 Taking all of these categories together, there are no official figures or estimates available on the number of children affected by and vulnerable to HIV/AIDS, in any state, or in the whole of India. Coupled with the limited understanding of the magnitude of the problem is the limited understanding of the issues and problems concerning children affected by and vulnerable to HIV/AIDS, and the appropriateness of the limited approaches for intervention with this group. This lack of information and documentation seriously affects the efficacy of programme planning and implementation.

6.4 Many Indians, including health care providers, consider AIDS a disease that only affects people with “unorthodox” lifestyles. This attitude reflects the stigma and discrimination directed toward Indians affected by HIV/AIDS, and contributes to the inadequate health care services that they receive. Compounding the problem, negative attitudes from health care staff cause anxiety and fear among many people living with HIV/AIDS who, as a result, hide their HIV status and miss the opportunity to avail themselves of treatment and other services. Gender inequality has also contributed to the epidemic, as women often lack the power to negotiate or assert their rights in regard to their sexual choices and, more broadly, their access to education, economic opportunity, and health care.

7. Key issues of concern

7.1 In the context of HIV, rights-based law and policy has been seen to play a vital role in creating effective national responses to the epidemic, reinforcing the interdependence of all of a child’s basic human rights in reducing, or increasing, his or her vulnerability to HIV.

7.2 UNAIDS argues that rights violations and limited realization of rights drive the HIV epidemic and creates barriers to accessing HIV-related prevention, treatment and care services:

“HIV transmission is not a random event: the spread of the virus is profoundly influenced by the surrounding social, economic and political environment. Wherever people are struggling against adverse conditions such as poverty, oppression, discrimination and illiteracy, they are especially vulnerable to being infected by HIV.”

---

7.3 UNAIDS has further argued that:

(a) Vulnerable populations, such as girl children orphaned by HIV with restricted property rights and limited access to education and information, may become dependent upon male sexual partners for economic survival. This may place affected girl children in a position where they are unable to negotiate safer sex;

(b) Children living with HIV may fear HIV-related stigma and discrimination, discouraging them from disclosing their HIV status to carers and sexual partners, and further limiting their access to prevention, treatment, care and support services; and

(c) Children who are denied the right to access confidential sexual and reproductive health services independently of their parents may simply choose not to use health care services, denying them the opportunity to access vital health care.\(^{204}\)

7.4 In most of these cases, affected children fall prey to extreme unforeseen poverty after losing their bread winner and having to shoulder key family responsibilities for which they are too young. Many of them drop out of schools and take up menial jobs to earn a basic living for the families. Often, they are also forced to play the role of caregivers to the younger siblings and/or their parents who are HIV positive. When these children perform the role of adults, they are likely to lose their childhood. Since the major share of family earnings goes into expensive HIV/AIDS treatment, little is left for the basic needs of the child.

8. Care and support

8.1 HIV-positive children time and time again face abandonment by their family, community, and society. Infected and affected children can rarely turn to their extended family for support and may become wards of the state; however, the state-run institutions lack enough space to accommodate all children.

8.2 One of the harshest effects of the global AIDS epidemic is the number of orphans it has created, and continues to create. It was estimated that by the end of 2005, more than 15 million children had lost one or more of their parents as a result of AIDS.\(^{205}\) Orphaned children of HIV-positive parents, or affected children who do not have guardians to take care of them, are vulnerable to adopt risky behaviour due to psychological and economic distress - making them further vulnerable to contracting HIV. They are also at a heightened risk of being trafficked or forcibly abducted.

8.3 Furthermore, there are nearly 300,000 children in India who are engaged in commercial sex. According to Rita Panicker of NGO Butterfly, approximately 18 million children work or live on the streets in India and a high percentage among them are sexually active. Commercial sex work and high rates of early sexual activity further expose street youth to the threat of HIV infection.

9. Access to HIV/AIDS treatment

Anti-Retroviral Therapy (ART)

9.1 Currently available drugs do not cure the HIV infection but can prevent the development of AIDS. Hence, people with HIV need to continuously take antiretroviral drugs. Since 1996, the use of antiretroviral (ARV) therapy in combinations of three or more drugs as a HIV treatment has dramatically improved the quality of life for people with HIV and prevented their early death in countries where they are widely accessible.

\(^{204}\) http://www.hivlawcommission.org/index.php/working-papers?task=document.viewdoc&id=88

\(^{205}\) http://www.countercurrents.org/gathia090708.htm
9.2 However, taking at least 3 medicines at the same time makes it harder for the virus to adapt and become resistant. Taking the medicines every day at the right time and in the right way keeps the right levels of the medicines in the body which makes it very hard for the virus to become resistant to the medicines. Furthermore, missing your medication can give the HIV a chance to become resistant to the ARV medicine; this presents a clear issue for street youth living with or affected by HIV/AIDS, who may not be able to continue medical treatment for a variety of reasons.206

9.3 Further, the young LGBTQ community who leave their homes owing to discrimination and family stigma become very vulnerable to HIV by increased risk-taking behaviours.

9.4 Fear of discrimination or experience of discrimination faced by male-to-female transgender people in health care settings207 have also been shown to hinder access to HIV testing, antiretroviral treatment and sexual health services in public hospitals.208 Barriers to access and use of these services in the public hospitals are identified at the individual (self-stigma, poverty), institutional (registration policies) and structural levels (societal stigma).

10. Right to education for children living with HIV

10.1 Since HIV cannot be transmitted through casual contact, normal learning activities within schools do not pose any threat of infection. WHO and UNESCO have published a set of recommendations for infection control precautions within schools, and several international conventions reinforce the right of HIV positive children to attend school, including:

(a) Article 26 of the UDHR;
(b) Article 13 of the ICESC; and
(c) Article 2 of the CRC.

10.2 In the Indian context, various Constitutional provisions under Articles 15(3), 45, 46 and 51(c) uphold the rights of HIV-positive children against discrimination in the educational sphere. Furthermore, the Right to Education Act 2009 categorically makes the state responsible for providing uninterrupted free and elementary education for all children up to the age of 14 years.

11. Relevant schemes

11.1 Very limited attention has been given to the vulnerability of street children to HIV infection and to interventions for prevention of transmission. Case studies of some interventions that have successfully integrated HIV prevention in working with vulnerable children are given below.

The Integrated Child Development Scheme (ICDS)

11.2 The ICDS is the largest government sponsored child welfare programme in the world. The programme caters to pregnant women, lactating mothers and children of 0-6 years with a package of services. In terms of reach and coverage, ICDS has the highest potential for reaching children affected by HIV/AIDS at the community level. It therefore makes sense to involve ICDS workers in caring for affected children at the village/slum level.

207 http://www.nswp.org/resource/research-sex-work-7
Integrated Child Protection Scheme (ICPS)

11.3 This new scheme envisages setting up a nationwide child protection mechanism. Child protection refers to the protection of children from any form of neglect, abuse and exploitation. See above at Chapter B for further information on the scheme generally.

11.4 The ICPS aims to give effect to statutory provisions under the Juvenile Justice (Care and Protection) Act 2000 by combining preventive and ameliorative steps to safeguard children in difficult circumstances, a category which expressly includes children affected by HIV/AIDS. Child Protection Units at state and district levels and Child Welfare Committees will be equipped to deal effectively with cases of discrimination or abuse arising from any cause, including HIV/AIDS. Additionally, any out-of-family care of children will be subject to regulatory quality control and monitoring mechanisms, which must include appropriate safeguards to prevent the exclusion of children affected by HIV/AIDS while providing suitable treatment and support for those who are HIV-positive.

11.5 District child protection units will provide legal aid specifically for children affected by HIV/AIDS, including support for the preparation of wills and transfer of property, and facilitate access to legal support and redress for specific legal issues, especially for orphans. These units will also work to sensitize family, local governance structures and village committee members to children’s rights and entitlements, and disseminate information on legal rights of families and children.

11.6 The scheme will also strengthen alternate forms of family based care like foster care and adoption, and ensure that an affected child’s stay in a child-care institution is as short as possible and that they are not discriminated against. Sanctions should be implemented against institutions that violate the national policy on stigma and discrimination. Elements of the program will also work to strengthen HIV prevention strategies for vulnerable children in urban sites.

Department of AIDS Control

11.7 The National AIDS Control Organization (“NACO”) is a division of the Ministry of Health and Family Welfare that provides leadership to HIV/AIDS control programmes in India. Through 35 HIV/AIDS Prevention and Control Societies, NACO implements one National Plan with one integrated monitoring system. State AIDS Prevention and Control Societies (“SACS”) implement the NACO scheme at state level, but have functional independence to upscale and innovate.

11.8 NACO’s National AIDS Control Programme (IV) aims to achieve the highest quality of life for HIV affected children and their families, and ensure that they are not excluded from or treated differently within community public services.

12. International Commitments

United Nations Convention on the Rights of the Child

12.1 The CRC, ratified by India in 1999, obliges governments and civil society to safeguard the rights of all children in every society - including those affected by HIV/AIDS. Relevant rights include:

(a) Right to information and material aimed at the promotion of social, spiritual and to moral wellbeing, physical and mental health (Article 17)

(b) Right to health (Article 24) and to preventive health care, sex education and family planning education and services (Article 24(f))

(c) Right not to be separated from parents (Article 9)

(d) Right to social security and social insurance (Article 26)

(e) Right to special protection and assistance by the state (Article 20)
(f) Right to education and leisure (Articles 28 and 31)

(g) Right to physical and psychological recovery and social reintegration (Article 39)

**The National Plan of Action for Children 2005**

12.2 The 2005 National Plan of Action for Children (the “Plan”) identifies the following goals in the context of children affected by HIV/AIDS strategies:

(a) To stop the growth of HIV/AIDS and sexually transmitted infections by 2010

(b) To reduce the proportion of infants infected with HIV by 20% by 2007 and by 50% of all such children by 2010.

12.3 The Plan highlights the role of the Panchayats (assemblies) to create awareness and take steps “for giving refuge to street children and combating HIV/AIDS”.

12.4 It is interesting to note that while the Plan had clearly laid out the various goals, objectives and strategies in the context of children infected and affected by HIV back in 2005, much remains to be done in terms of implementation. Discrimination against children infected and affected by HIV continues in many different spheres of life: in their homes, families, communities, educational institutions, and medical services.

12.5 The Government’s efforts to reach out to the general population through mass media about the infection and its prevention have been unable to create awareness to the desired extent. Even now, myths regarding the spreading of HIV through mosquito bites, shared utensils, clothes, or nail cutters continue to be perpetuated.

**Policy Framework for Children and AIDS, July 2007**

12.6 The Policy Framework for Children and AIDS, released by NACO and the Ministry of Women and Child Development, adopts a rights-based lifecycle approach. It takes into account the changes in the global understanding of the adverse impacts of HIV/AIDS on children, and of the best ways to address them.

12.7 The framework goal is to ensure that India provides “a sustainable and integrated system of HIV prevention, counselling, testing, treatment, care and support to ensure that children who are vulnerable to HIV-infection or who are HIV-positive or otherwise affected by HIV/AIDS enjoy the same benefits and opportunities as all other children to develop their full potential.”

**HIV/AIDS Bill 2007**

12.8 The HIV/AIDS Bill (the “Bill”) was drafted in 2006, “to provide, keeping in view the social, economic and debilitating effects of the HIV epidemic in India, for the prevention and control of the HIV epidemic in India, the protection and promotion of human rights in relation to HIV/AIDS, for the establishment of National, State, Union Territory and District Authorities to promote such rights and promote prevention, awareness, care, support and treatment programmes to control the spread of HIV, and for matters connected therewith or incidental thereto.”

12.9 The Bill provides for protection against discrimination on the basis of HIV/AIDS status in employment, education, healthcare, travel, and insurance. It also makes extensive provision for various entitlements for children, relating to health, education, child and youth friendly initiatives, and the protection of property.

12.10 The Bill allows for older siblings to have their guardianship recognised legally, providing that: “a person below the age of 18 years who is the managing member of a family affected by HIV/AIDS shall

209 The HIV/AIDS Bill 2007
be competent to act as guardian of any other persons below the age of 18 years who are members of such family” for the purposes of admission to educational institutions, care and protection, treatment, operating bank accounts, managing property, and other areas.

12.11 On 11 February 2014, the Bill was finally tabled in the Rajya Sabha by the Health Minister Mr. Ghulam Nabi Azad. This is an important milestone in achieving equal rights and ending discrimination against people living with HIV/AIDS. As the Bill was introduced in the Rajya Sabha, it will not lapse with the end of the term of the Lok Sabha and is expected to go to the Parliamentary Standing Committee on Health and Family Welfare for their recommendations. The Bill may then be amended and reintroduced in Parliament to be passed.

Judicial Activism

12.12 The judiciary has played a very proactive role in HIV-related issues. Although several statutes focus on the welfare of children, there are a plethora of landmark decisions of higher courts which still hold as the pivotal rights framework for children in India. The Constitution’s guarantee of equality and non-discrimination means that children living with HIV are not to be discriminated against in matters concerning them; however, at the same time, the State can institute special measures to mitigate the impact of HIV on affected persons and communities. The rights to life and liberty have been interpreted expansively by the Supreme Court to encompass such positive claims as privacy and confidentiality, health, medical treatment, and education.

12.13 Articles 32 and 226 of the Constitution secure the right to seek redress from the courts for non-enforcement and/or violation of constitutional rights, and such courts have the authority to strike down any legislation, policy or executive action which, in its finding, is contrary to or compromises fundamental rights.

12.14 Furthermore, to enable access to justice for the poor and marginalized, courts have established procedures like Public Interest Litigation that allow any person with a bona fide and sufficient interest in an issue to file a petition to vindicate any fundamental and/or statutory rights. This is of immense significance for vulnerable children, who are unable to seek such relief themselves on account of legal, financial and other disadvantages. Many landmark decisions on children’s rights have been borne out of such public interest litigation.

Relevant state and civil society initiatives:

Children Affected by AIDS (“CABA”)

12.15 The CABA Pilot Scheme was launched by the NACO in May 2010 to “ensure that all children exposed to and affected by HIV/AIDS are identified and linked to early diagnosis and treatment services, along with development, protection and welfare services on a need basis.” Strategies and operational guidelines were developed through a Task Force comprising NACO, Ministry of Women and Child Development (“MWCD”), UNICEF, USAID, FHI, India HIV/AIDS Alliance and the Clinton Foundation.

12.16 The Scheme targeted the ten districts with the highest prevalence of HIV/AIDS in the country, with North East Delhi the only city district selected. North East Delhi is one of four HIV/AIDS “moderately prevalent” districts in Delhi. The HIV trend among ante - natal cases has fluctuated from a low of 0.1 to

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211 State of Punjab v. Mahinder Singh Chawla, AIR 1997 SC 1225
212 Parmanand Katara v. Union of India, AIR 1989 SC 09
214 Ministry of Women and Child Development (MWCD), National AIDS Control Organization (NACO), Operational Guidelines for Children Affected by HIV/AIDS, May 2010

www.bakermckenzie.com
a high of 0.3 with the 2007 rate of 0.2.\textsuperscript{215} Piecing together information from different sources, the total number of adults on ART in June 2011 in Delhi was 8,308. The number of pediatric ART was 659 children. According to the District Situation Analysis (“DSA”) conducted by the CABA Pilot Scheme, there are approximately 86 children infected with HIV/AIDS and 775 affected children in North East Delhi.

**Shalom Delhi**

12.17 Shalom Delhi is a project of the Emmanuel Hospital Association (“EHA”), a large non-profit provider of health care with a network of 20 hospitals and 40 community based projects across 14 states of India and a 42 year history of holistic work. Since 1995, the EHA has contributed to HIV/AIDS management with a Mission that EHA would be committed to promoting the effective prevention of HIV transmission and the provision of unconditional, compassionate care for people infected and affected by HIV/AIDS.

12.18 EHA’s HIV/AIDS work was started in Delhi in the year 2001 as the “Delhi AIDS Project”. Phase 1 of the work included the establishment of medical services, home based care, capacity building for NGOs and FBOs (faith based organizations) in HIV/AIDS and support for widows and children infected and affected by HIV/AIDS.

**The Naz Foundation (India) Trust**

12.19 The Naz Foundation (India) Trust is an NGO that has been working in the HIV/AIDS field of HIV/AIDS since 1994. In 2001, after a child living with HIV was abandoned at their doorstep, they opened a Care Home for orphaned and abandoned children living with HIV/AIDS. The residential care home houses about 30 children from across the country, between the ages of seven and 19 years, who are referred by child care institutions, orphanages, hospitals, and NGOs.

12.20 Naz India has given these children a lifetime commitment, and provides for their educational, nutritional, medical, recreational as well as psycho-social needs. The home provides a holistic approach to the children’s health and well-being, and provides a safe environment in which the children can learn to interact with others while being looked after by caregivers around the clock.

12.21 The Naz Foundation also initiated a home-based care programme for children infected and affected by HIV. Initially started in 2001 for adults living with HIV, it later started catering to children. Counsellors visited the hospitals, followed by a home visit to assess the needs of the child.

**HIV/AIDS Alliance**

12.22 The Alliance aims to reduce the spread of HIV and its impact on children, their families, and the communities they live in. Its programmes support children that have lost one or both parents to AIDS, children living with HIV, children who may be currently caring for sick family members, children who are in families that have taken in orphans, and children vulnerable to HIV infection.

12.23 Alliance partners provide children and families with direct financial or material support, including school expenses, food and clothing, or with help to gain access to government grants and pensions. They also provide social and emotional support: helping children with disclosing their status or understanding a parent’s diagnosis, dealing with bereavement, or helping families with legal issues such as birth registration, inheritance rights and adoption.

**Udayan Care’s ‘Outreach’ Programme**

12.24 Udayan Care identifies select HIV affected children with the help of different organizations working in the HIV/AIDS field for the Udayan Outreach Programme. These organizations assess families based on

\textsuperscript{215} http://delhi.gov.in/wps/wcm/connect/doit_dsacs/DSACS/Home
set criteria and recommend children for the induction into the programme; once incorporated, children and parents are afforded all of the programme’s benefits.

13. Conclusion

13.1 Despite the initiatives above and the volume of work done to support the cause, a number of key issues remain matters of concern and must be addressed:

(a) Improved implementation of directions, guidelines, and policy of the Government;
(b) Residential care homes for children affected/infected by HIV;
(c) Alternative care options, such as foster homes;
(d) Provision of after care: HIV-positive children who may live independently if provided after care facilities for treatment as they lack family support;
(e) Legal support: the legal rights of positive children must be safeguarded, and thereby state run legal support is essential; and
(f) Further financial assistance schemes.
Appendix A: State by State Definitions relating to disadvantaged children for the purposes of Education.

<table>
<thead>
<tr>
<th>State</th>
<th>Definition provided in State Notification</th>
<th>Documents required for obtaining admission</th>
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<tbody>
<tr>
<td>Andaman and Nicobar Islands</td>
<td>Disadvantaged Group: Child belonging to Scheduled Caste (SC), Scheduled Tribe(ST) and socially and economically backward classes or having disadvantage owing to such social, cultural, economic, geographical, linguistic, gender etc., including orphans, children of families of scavengers, children with special needs or disabilities</td>
<td>Silent</td>
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</tbody>
</table>
| Andhra Pradesh         | • Street Children specifically covered  
• Economically weaker section defined as children with parents whose income does not exceed 60,000 Rupees                                                                                                                                 | • Proof of residence- Ration card/ Pattadar passbook/ Electricity bill/ House tax receipt/ Telephone bill etc.  
• Birth certificate- Hospital/ Auxiliary nurse/ Midwife record/ Anganwadi record/ Self declaration by parent or guardian |
| Arunanchal Pradesh     | **Disadvantaged group**-  
(a) Child belonging to disadvantaged group means child belonging to the Scheduled Caste, Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economic, geographical, linguistic, gender or such other factor as may be specified by the State Government of Arunachal Pradesh by notification.  
(b) Child with special needs and suffering from disability means as per disability Act or as defined by the State Government of Arunachal Pradesh.  
**Economically weaker section**- Child | Certificate that a child belongs to EWS/ Below Poverty Line (BPL)/ Disabled/ orphan initially if the certificate is not available the declaration of parents may be accepted for the purpose of admission however, the certificate needs to be submitted within a period of 3 months. 
If handicap is visually assessable no certificate is required. |
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<th>State</th>
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<th>Documents required for obtaining admission</th>
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<tr>
<td></td>
<td>belonging to weaker section means a child belonging to such a parent or guardian whose annual income is lower than the minimum limit specified by the State Government of Arunachal Pradesh by notification. Though the Gazette does not specifically mention that street children are covered under the Act, it includes economically weaker sections of the society, and excludes any compulsory requirement for proof of residence.</td>
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<tr>
<td>Assam</td>
<td>Specifically includes street children</td>
<td>For identification of street children certificate of Labour Department or local police station</td>
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<tr>
<td>Bihar</td>
<td><strong>EWS</strong> - Children with whose parents earn less than 200,000 Rupees per annum are entitled to free education. <strong>Disadvantaged group</strong> - SC, ST, Minority children whose parents earn less than Rs. 1 Lacs per annum</td>
<td>Silent</td>
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</table>
| Chandigarh          | **Economically disadvantaged group** – Children of war widows, children of disabled persons with minimum 60% disability of either parent as certificate and orphans  
No specific mention, only mentions that economically weaker sections are allowed (Economically weaker sections are to be defined by each state), but Orphan children are specifically included. |                                                                                                             |
<p>| Chattisgarh         | Nothing mentioned                                                                                                                                                                                                                      | Nothing mentioned                                                                                           |
| Dadar Nagar Haveli  | Not available                                                                                                                                                                                                                         |                                                                                                             |
| Daman and Diu       | Children of slum dwellers are specifically included, as well as children of landless agricultural labourers                                                                                                                               |                                                                                                             |</p>
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<th>State</th>
<th>Definition provided in State Notification</th>
<th>Documents required for obtaining admission</th>
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| Delhi | EWS - Children whose parent’s income is less than 1 lac rupees per annum. (The requirement of minimum 3 years of residence in Delhi has been removed by subsequent circular.) Disadvantaged group- SC, ST, child suffering with disability. (A call to Department of Education Delhi confirmed that street children are covered under Socially Disadvantaged groups in Delhi.) | The documents to be produced at the time of admission :-  
- BPL Ration Card/ Certificate if tehsildar/ AAY Ration card pink colour, which means the parents of the youth are supposed to at least have a ration card.  
- Self-declaration of annual income affidavit every year. Provided that non-submission shall not result in expulsion without the prior permission of Director of Education  
- For child belonging to disadvantaged group- Certificate issued by revenue officer not below the rank of Tehsildar or any other competent authority in the name of the child or his parents.  
- Proof of Residence- Any one of the following-  
  (a) Ration card  
  (b) Domicile certificate  
  (c) Voter ID card  
  (d) Electricity bill/ MTNL Phone bill/ Water bill/ Passport |
| Goa   | Silent on the issue. Only includes differently abled children as per state gazette. | Silent |
| Gujrat| EWS and Disadvantaged group shall include SC,ST,OBC  
Children who need care and protection and children who belong to child care institutes including :-  
(1) Orphan child  
(2) Children needs care and protection  
(3) Children belongs to child care institute  
- For admission under Weaker Section- BPL card/Ration card  
- For Disadvantaged Group- Certificate of caste and income by competent official  
Proof of residence- Ration card/voter id/electricity bill/water bill/adhar card/ Official basis provided by the |
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<tr>
<td>Haryana</td>
<td>EWS and Disadvantaged group children shall mean- Child of a family belonging to Below Poverty Line Group as specified by the government and orphans, child with disabilities, child with special needs, child of war widow</td>
<td>Silent</td>
</tr>
<tr>
<td>Himachal Pradesh</td>
<td>Below Poverty Line, no other specific reference</td>
<td>Silent</td>
</tr>
<tr>
<td>Jammu and Kashmir</td>
<td>Data not available</td>
<td>Data not available</td>
</tr>
<tr>
<td>Jharkhand</td>
<td>Mentions economically weaker sections and disadvantaged groups and BPL category, amongst these groups priority shall be given to those living BPL</td>
<td>Silent</td>
</tr>
<tr>
<td>Karnataka</td>
<td>Specifically includes migrants, orphans and street children</td>
<td>For orphan children certificate of competent authority of Women and Child Development Department or Labour Department.</td>
</tr>
<tr>
<td>Kerela</td>
<td>Economically Weaker Section defined as Child belonging to parent or guardian whose income is less than 60,000</td>
<td>Silent</td>
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<td>State</td>
<td>Definition provided in State Notification</td>
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<tr>
<td></td>
<td>Rupees per annum. Disadvantaged Groups has been defined as child belonging to SC, ST and socially and economically backward class and includes orphans and children with disabilities.</td>
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<tr>
<td>Lakshadweep</td>
<td>Not Available</td>
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</tbody>
</table>
2. Documents required for the Disadvantaged Group:-  
   Proof of SC/ST, A proof of belonging to the SC/ST community belonging to a sibling of a child being considered for admission is also valid proof. Tribal certificate in favour of the guardian.  
3. Children with Disabilities:– Medical Certificate  
4. Economically weaker section:- BPL card |
| Maharashtra   | Disadvantaged Group- SC, ST, Child with disabilities  
Weaker Section- Children belonging to Nomadic tribes, SC, ST, religious minorities specified by the state government whose guardians income is below 1 Lacs Rupees per annum. | Birth Certificate  
Income Certificate  
Caste Certificate  
Disability Certificate (For disabled children)  
Proof of Residence |
| Manipur       | Disadvantaged Group- SC, ST, Orphans, Children with special needs  
Weaker Sections- Backward classes, Minorities, Other classes whose parents earn less than 40,000 Rupees per annum | Silent |
<table>
<thead>
<tr>
<th>State</th>
<th>Definition provided in State Notification</th>
<th>Documents required for obtaining admission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meghalaya</td>
<td>Street Children specifically included</td>
<td>For identification of street children certificate of competent authority of Education Department or Social Welfare Department or Labour Department shall be relied upon</td>
</tr>
<tr>
<td>Mizoram</td>
<td>For both Disadvantaged Group and Economically weaker section - Both shall mean child belonging to a BPL family</td>
<td>Silent</td>
</tr>
<tr>
<td>Nagaland</td>
<td>Not Available</td>
<td>Not Available</td>
</tr>
<tr>
<td>Orissa</td>
<td>Street Children Specifically included, manual scavengers also specifically included</td>
<td></td>
</tr>
<tr>
<td>Puducherry</td>
<td>Weak section- Below BPL Disadvantaged Groups- SC, ST, Most Backward Community, physically handicapped</td>
<td>Ration card as proof of residence for more than 2 years</td>
</tr>
<tr>
<td></td>
<td>Children shall invariably reside for a minimum of 2 years immediately preceding the date of admission in neighbourhood area of the school</td>
<td></td>
</tr>
<tr>
<td>Punjab</td>
<td>Notification is provided in Punjabi, anyone who can read Punjabi may please access the notification through the link provided below and update this list.</td>
<td></td>
</tr>
<tr>
<td>Rajasthan</td>
<td>Disadvantaged Group- SC, ST, child with disabilities EWS- BPL Families and families whose yearly income does not exceed 2.5 Lacs Rupees</td>
<td>Silent</td>
</tr>
<tr>
<td>Sikkim</td>
<td>Not Available</td>
<td></td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>Disadvantaged Group- In addition to the definition in the RTE, disadvantaged group shall mean orphans, scavengers,</td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>Definition provided in State Notification</td>
<td>Documents required for obtaining admission</td>
</tr>
<tr>
<td>---------------</td>
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<td>------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>transgender children.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>EWS- Guardian’s annual income is below 2 Lacs Rupees</td>
<td></td>
</tr>
<tr>
<td>Tripura</td>
<td>Silent</td>
<td>Silent</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>Disadvantaged group- SC, ST, Socially and educationally backward classes, orphans and children with special needs. EWS- People with BPL card or those registered under Gram Vikas Vibhag, children with physically challenged guardian, Guardians with income less than 1 Lacs Rupees. Guardians with income less than 35,000 Rupees shall be given priority.</td>
<td>EWS certificate (In Hindi- Nigrat Aye Praman Patr)</td>
</tr>
<tr>
<td>Uttarakhand</td>
<td>Not mentioned</td>
<td>Proof of EW and Disadvantaged group from Zila-adhikari</td>
</tr>
<tr>
<td>West Bengal</td>
<td>Economically Weaker Section- Anyone Below Poverty Line.</td>
<td>Certificate of SC, ST, OBC</td>
</tr>
</tbody>
</table>
Appendix B: Overview of Government Employment Schemes

Pradhan Mantri Kaushal Vikas Yojana approved by the Cabinet

1.1 The Pradhan Mantri Kaushal Vikas Yojana was approved by the Union Cabinet on March 20, 2015. It is a scheme for skill training of youth to be implemented by the Ministry of Skill Development and Entrepreneurship through the National Skill Development Corporation (“NSDC”). Skill training would be imparted based on the National Skill Qualification Framework. Some of the key features of the scheme include:

(a) **Coverage**: The scheme will cover 24 lakh people. It will focus on first time entrants to the labour market and will target Class 10 and 12 drop outs. A one-time monetary reward of around 8,000 rupees per trainee will be given under the scheme.

(b) **Outlay**: The Cabinet approved a total outlay of 1,500 crore rupees for the scheme. Out of this, 1,120 crore rupees will be spent on skill training, 220 crore rupees on recognition of prior learning, 67 crore rupees on awareness building, mobilisation and mentorship support, and 150 crore rupees for training of youth from the North-East region.

(c) **Assessing demand**: Skill training would be done on the basis of demand assessed by skill gap studies, conducted by the NSDC for 2013-17. A demand aggregator platform would be launched.

(d) **Implementation**: The scheme would be implemented through NSDC’s 187 training partners (with 2,300 centres), in addition to government affiliated training partners. Training would include soft skills, personal grooming, good work ethics, etc. A Skill Development Management System would be put in place to verify and record details of training centres. A grievance redress system will also be instituted.

Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA, earlier known as NREGA)

1.2 MNREGA is an Indian employment guarantee scheme, enacted by legislation on August 25, 2005. The Act provides a legal guarantee of one hundred days of employment in every financial year to adult members of any rural household willing to do public work-related unskilled manual work at a minimum wage of 100 Rupees per day. Announcing the highest ever allocation to MGNREGA, Finance Minister Arun Jaitley in his budget speech said that he would increase the allocation for the scheme by 5,000 Rupees crore.

1.3 It was assumed that NREGA had the potential to improve living conditions in rural areas by providing wholesome economic support through unskilled manual work to the locals. It is also committed to ensuring that at least 33% of the workers shall be women. Some of the economic activities under this scheme are:

(a) Work linked to agriculture, food processing and watershed development.

(b) Services such as health care, selling medicines, child care, old age care etc.

(c) Works of public interest sponsored by government such as environmental work, recycling, water harvesting, operation and maintenance of water resources like hand pumps and pipelines.

(d) Many such works which may be local to the area including paper cups making, beedi rolling and pottery among others.
1.4 In rural India, one major problem is of seasonal employment, i.e. a large number of people have to face unemployment during certain parts of the year. NREGA acts like a fail-safe mechanism providing income and employment when needed the most. In effect for nearly five years, the act has been successfully implemented in certain states. Still a lot needs to be done to spread its positive effects through larger states. One of the major hurdles still remains the cooperation between state governments and the Centre.

1.5 Design features:

(a) Guaranteed Employment - any adult member of a rural household applying for work under the Act is entitled to employment. Every rural household is entitled to not more than 100 days of employment.

(b) Guaranteed Wages - wages are to be paid on a weekly basis and not beyond a fortnight. Wages are to be paid on the basis of:

(i) Centre-notified, state-specific MGNREGA wage list

(ii) Time rates and Piece rates as per state-specific Schedule of Rates

(iii) In any case, the wage cannot be at a rate less than Rs. 100 per day

(c) Unemployment Allowance – if work is not provided within 15 days of applying, the state is expected to pay an unemployment allowance which is one fourth of the wage rate.

(d) Provision of Work – work is to be provided within a 5km radius of the applicant’s village, else compensation of 10% extra wage is to be provided to meet expenses of travel.

(e) Gender Equity – men and women are entitled to equal payment of wages. One third of the beneficiaries are supposed to be women.

(f) Financial Inclusion – since 2008, all wage payments have had to be transferred to bank or post office accounts of beneficiaries.

(g) Social Security Measures – in 2008, a provision was created which made it possible to cover beneficiaries under either the Janashree Bima Yojana (JBY) or the Rashtriya Swasthya Bima Yojana (RSBY).

(h) Transparency and Accountability – all MGNREGA-related accounts and records documents have to be available for public scrutiny. Contractors and use of machinery is prohibited.

(i) Rights-based, demand-driven approach – estimation and planning of work is conducted on the basis of the demand for work. Hence, beneficiaries of the scheme are enabled to decide the point in time at which they want to work.

For more details please see: http://nrega.nic.in/netnrega/home.aspx

1.6 One of the most significant contributions that an Employment Generation Programme (“EPG”) like the MNREGA makes is the potential social benefits in the form of inclusion and participation that comes from productive employment. It has to be noted that MNREGA is not a youth-specific EPG but rather applies to all adults above the age of 18. While it provides a guarantee for 100 days of labour per year on public works projects for any rural household member who wants such work at the stipulated minimum wage rate. The limitations of the Programme are many. As with all government programmes the implementation of this Programme even for the people it intends to benefit is quite poor and data shows that the poorer states in India where rural employment is required more are the ones where there is a larger gap in demand and supply of MNREGA employment.
1.7 Other than implementation, other areas where this EGP falls short on employment of youth are:

(a) This Programme clearly does not have any impact on urban youth. With the pace of urbanization in India increasing rapidly this is a significant portion of the population that does not benefit from this Programme. Another fact is that under this Programme only persons above the age of 18 are eligible for employment. Again leaving open a very significant gap of youth between the ages of 15-18 that do not get any benefits under this EPG. It also provides only labour employment and there are no avenues for skilled or semi-skilled rural youth to seek employment. The Government has already made some attempts at providing vocational training, but this EPG does not work in the direction of providing employment to youth trained in these areas.

(b) While this EPG does provide employment it does not help address the main issue that the unemployment of youth in the Indian labour market is high, due to their lack of marketable education and skills.

1.8 Despite the above critiques of the MNREGA it is groundbreaking EPG legislation in India. It is under this EPG that for the first time ever the Government is providing employment guarantees. However, it is equally true that it is woefully inadequate and does not help the aspirational Indian youth in either learning new skills or using any vocational skills they may have to generate employment.

Prime Minister’s Employment Generation Programme (“PMEGP”)

1.9 The PMEGP was announced on 15 August 2008 and was created by merging two schemes, PMRY (Prime Minister’s Rojgar Yojana) and REGP (Rural Employment Generation Program) which were operational until 31 August 2008. It is a credit-linked subsidy programme launched by the Ministry of Small and Micro Medium Enterprises in 2008-09 for the creation of employment in both rural and urban area of the country. One of the objectives of the Scheme is to bring together widely-dispersed traditional artisans/rural and urban unemployed youth and give them self-employment opportunities to the extent possible. It provides continuous and sustainable employment to a large segment of traditional and prospective artisans and rural and urban unemployed youth in the country, so as to help arrest migration of rural youth to urban areas.

1.10 The Scheme is implemented by Khadi and Village Industries Commission (“KVIC”) at the national level and by KVIC directorate, Khadi and Village Industries Board (“KVIB”) and Districts Industries Centres at the state level. The Government subsidy under this Scheme will be distributed to the beneficiaries/entrepreneurs through identifies banks by KVIC. Individuals above 18 years of age are eligible for subsidy to set up projects under PMEGP.

For more details, please see: http://www.kviconline.gov.in/pmegp/pmegpweb/

1.11 The PMEG had been launched with great fanfare by the last government in power in India. However, this scheme though based on sound principals has not been very popular. One reason is that the PMEG is dependent upon the interaction between the KVIC board members with the KVIB board members. Due to these two boards failing to work cohesively most funds sanctioned have remained unutilized. Furthermore, neither of the boards have a competent machinery to study and assess the merit of the proposals. Therefore, many proposals are lying stagnant without any response.

Hunar Se Rozgar Tak

1.12 Hunar se Rozgar Tak is an employment scheme launched by the Tourism Ministry, Government of India in 2009 for youth in the 18-28 years age group and who are at least 8th pass. These are training programmes to create employable skills in hospitality sector under the Capacity Building Scheme of Ministry of Tourism. Initially the programme was to be conducted by 25 Institutes of Hotel Management and Food Craft Institutes sponsored by the Ministry of Tourism. Subsequently, the
programme has been conducted by certain starred hotels. The programme will target the youth of weaker sections of societies who are interested in joining the hospitality industry and need to acquire facilitating employment.

1.13 For more details please see:
http://www.ktdc.com/training/, http://hptdc.nic.in/hsrt.htm,
http://ihmshillong.nic.in/rozgar.html
http://www.ihmhyd.org/HRG/HUNAR_SE_ROZGAR.htm

**Training Rural Youth for Self Employment (“TRYSEM”)**

1.14 The TRYSEM was initiated to provide basic technical and managerial skills to rural youth aged 18-35 who are from families below the poverty line to enable them to take up self-employment and wage employment in the broad fields of agricultural and allied sectors, namely industries, services and business services. The coverage of youth from SC and ST communities should be at least 50% of the rural youth trained. Out of the total beneficiaries, at least 40% should be women.

1.15 The trainees are eligible for loans from the banks under the integrated rural development program, being implemented in all the districts of the country. The states bear 50% of the expenditure on the scheme, with the central government covering the rest (in the UTs, the central government covers the entire expenditure). The government covers the recurring costs towards the stipend paid to the trainees, the honoraria for the trainers, etc.; and also assists the training institutions to develop the requisite infrastructure in the form of building, equipment, and training aids. The trainees are supplied free tool-kits during their training. The tool-kits are supplied to help the trainees to gain the practical experience in the use of their tools. TRYSEM merged with a new self-employment program called Swarna Jayanthi Gram Swarojgar Yojana (SGSY) with effect from 1 April 1999.

**Swarnjayanti Gram Swarojgar Yojana (“SGSY”)**

1.16 The Special Projects for Skills and Development of Rural Youths under SGSY was designed to equip the unemployed rural youths from BPL (Below Poverty Line) households with marketable skills, which would enable them to either secure placement in the industry or pursue sustainable self-employment opportunities through micro enterprise.

1.17 For more details please see:
http://drd.nic.in/drdsgsy.asp
http://rural.nic.in/sites/programmes-schemes-sgsy.asp

1.18 This SGSY scheme is based on the principal that the rural unemployed people will fall Self Help Groups (“SHGs”) these SHGs will be then trained and aided by the government or agencies working with the government. Other than two states in India Kerala and Andra Pradesh where this Scheme was moderately successful due to the personal perseverance of the officers in charge this scheme has not been able to help alleviate rural poverty. There are multiple reasons for this: people did not want to form SHGs, when they did form SHGs it was usually the elite or powerful people from the village that took leaderships roles and made decided for the SHGs. This scheme has been viewed as top down and did not connect with the requirements and needs of the people in the grassroots.

**Special Schemes of State Governments**

1.19 Besides the national schemes listed above, several state governments have been operating self-employment schemes. The Government of Andhra Pradesh has set up a Society for Employment and
Training in the Twin Cities to provide informal training and assistance in taking up self-employment. Similar societies have now been set up also in all the other districts of the state. The Government of West Bengal has been operating a Scheme for Self-employment for the Registered Unemployed, i.e. the unemployed registered with employment exchanges. Madhya Pradesh has a soft loan scheme for the purpose; Delhi, Manipur, Maharashtra and Nagaland also have similar schemes. The functioning of these schemes needs a careful evaluation to assess the long-term viability of the enterprises set up by the assisted persons.

1.20 For more details please see:

http://www.appc.in/services-offered/government-programmes-and-rural-services.html
## Appendix C: Provisions Relating to Trafficking

### Overview of key provisions in India’s Constitution relating to trafficking

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<thead>
<tr>
<th>Provision of the Constitution</th>
<th>Description of provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 23</td>
<td>Fundamental Right prohibiting trafficking in human beings and forms of forced labour</td>
</tr>
<tr>
<td>Article 39(e)</td>
<td>Directive Principle of State Policy directed at ensuring that health and strength of individuals are not abused and that no one is forced by economic necessity to do work unsuited to their age or strength</td>
</tr>
<tr>
<td>Article 39(f)</td>
<td>Directive Principle of State Policy stating that childhood and youth should be protected against exploitation</td>
</tr>
</tbody>
</table>

### Other Indian Miscellaneous Laws relating to trafficking

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Section</th>
<th>Description of provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indian Penal Code 1860</td>
<td>366A</td>
<td>Procuring a minor girl</td>
</tr>
<tr>
<td></td>
<td>366B</td>
<td>Importation of a girl below 21 for sexual exploitation</td>
</tr>
<tr>
<td></td>
<td>370</td>
<td>Buying or disposing of a person as slave</td>
</tr>
<tr>
<td></td>
<td>372</td>
<td>Selling minor for prostitution</td>
</tr>
<tr>
<td></td>
<td>373</td>
<td>Buying minor for prostitution</td>
</tr>
<tr>
<td>Prohibition of Child Marriage Act 2006</td>
<td>12</td>
<td>Child marriage void, if after that the minor is sold or trafficked or used for immoral purposes</td>
</tr>
<tr>
<td>Children (Pledging of Labour) Act 1933</td>
<td>4-6</td>
<td>Penalties for pledging labour of children (under 15 years)</td>
</tr>
<tr>
<td>Juvenile Justice Act 2000</td>
<td>2(vii)</td>
<td>A child in need of care and protection includes on who is vulnerable and likely to be trafficked</td>
</tr>
<tr>
<td></td>
<td>24</td>
<td>Employment of child for begging</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Legislation</th>
<th>Section</th>
<th>Description of provision</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>26</td>
<td>Procuring juveniles for hazardous employment or bonded labour is punishable</td>
</tr>
</tbody>
</table>
Appendix D: Domestic Programs to Combat Poverty

Poverty

1.1 Typical measures of poverty are based on income or consumption, which register important dimensions of deprivation, but provide only a partial picture. People can be deprived of many things beyond income. They may have poor health and nutrition, low education and skills, inadequate livelihoods and poor household conditions, and they may be socially excluded.

Poverty Alleviation Programs in India

1.2 Poverty alleviation programmes in India can be categorized based on whether they are targeted at rural or urban areas. Most of the programmes are designed to target rural poverty as the prevalence of poverty is higher in rural areas. Furthermore, targeting of the poor is challenging in rural areas due to various geographic and infrastructure limitations. Such programmes can be mainly grouped into:

(a) Wage employment programmes;
(b) Self-employment programmes;
(c) Food security programmes;
(d) Social security programmes; and
(e) Urban poverty alleviation programmes.

1.3 The five year plans immediately after independence tried to focus on poverty alleviation through sectoral programmes. The first five year plan focused on agricultural production as a way of addressing poverty while second and third plans focused on massive state-led investments for employment generation in public sector. While these achieved some policy generation, they did not have enough strength to have a sweeping effect.

1.4 Jawahar Gram Samridhi Yojana ("JGSY") is the restructured, streamlined and comprehensive version of the erstwhile Jawahar Rozgar Yojana ("JRY"). It began on 1 April 1999. The main aim of this programme was development of rural areas, e.g. the development infrastructure such as roads to connect the village to different areas, which made the village more accessible, and also other social and educational infrastructure such as schools and hospitals.

1.5 JGY’s secondary objective was to provide sustained wage employment. This was only given to BPL families and funds were to be spent for individual beneficiary schemes for SCs and STs and 3% for the establishment of barrier-free infrastructure for disabled people. The village panchayats were one of the main governing bodies of this programme; therefore, it did not feel like an outsider was controlling the development of the village, as the panchayats were a part of the people and understood their needs.

Meeting the Zero Hunger Challenge - Professor M.S. Swaminathan

1.6 The Zero Hunger Challenge, launched in 2012 by the Secretary-General of the United Nations, integrates a zero food loss and waste challenge and a 100% sustainable food system challenge.

1.7 Over 70 years ago, the Indian sub-continent witnessed a serious famine in the Bengal region that led to the death of more than 3 million people. India’s population was then 300 million; it is now over 1.2 billion.

1.8 In 2013, India witnessed a historic transition from the famine conditions of 1943 to a legal commitment to provide, at a very low cost, the minimum essential calories to over 75% of the population from home-grown food. The challenge now is to sustain the right to food commitment in an era of climate change.

1.9 The Indian experience shows that the challenge can be met through a six-pronged strategy consisting of:
(a) Attention to soil health enhancement, and conservation of prime farm land for agriculture;
(b) Rain water harvesting, aquifer recharge and conjunctive use of ground water, surface water, treated waste water and sea water. Sea water constitutes 97% of the global water resource, and it is now possible to promote sea water farming systems involving halophytes and aquaculture;
(c) Spreading appropriate technologies and the needed inputs;
(d) Credit at low interest and effective group and individual insurance;
(e) Assured and remunerative marketing; and
(f) Providing farmers with small holdings and power of scale through cooperatives, self-help groups, producer companies and contract farming.

1.10 Through a science-based marriage of nutrition and agriculture, agricultural remedies can be provided for nutritional maladies. For achieving nutrition security, there is a need for concurrent attention to under-nutrition or calorie deprivation, protein hunger, and hidden hunger caused by deficiency of micronutrients like iron, iodine, zinc, vitamin A and vitamin B12. Protein deficiency can be alleviated through the enhanced production and consumption of pulses (grain legumes), milk, and eggs. Micronutrient deficiencies can be addressed through the popularization of bio fortified crops. Micronutrient-enriched varieties are becoming available in several crops, such as rice, beans, and wheat.

1.11 Above all, prioritising assisting small farm families to produce and earn more is the best way of overcoming poverty and malnutrition.

**Some NGOs Helping to Combat Poverty**

1.12 Resolve International

Nepal is ranked 207th in terms of per capita GDP (source: CIA Factbook) and is one of the poorest and least developed nations on earth. Resolve International is providing education by giving people the required material to succeed in education. Similarly, in recent years there has been a coordinated effort to improve sanitation, and thus help prevent serious diseases like dysentery and cholera, through the provision of micro-finance loans that enable families to build toilets. However, 70% of Nepalese are subsistence farmers with no cash income and who are unable to repay loans, no matter how small. For them, Resolve International provides building materials, construction training and hygiene education, so that they can build toilets themselves.

1.13 Isha Vidhya – Educating Rural India

Isha Vidhya provides a scaled approach to providing quality education within the limitations present in under-developed rural communities. Isha Vidhya was developed under the guidance of its parent organization, Isha Foundation. With many of its activities and volunteers located in India’s villages, Isha Foundation has developed the qualifications and understanding required to bring Isha Vidhya’s vision to fruition.