
Saumya Uma
RIGHTS OF ADOLESCENT GIRLS IN INDIA
A CRITICAL LOOK AT LAWS AND POLICIES

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Vacha Publication
Acknowledgements

This book is a collective effort. It was conceptualised by Sonal Shukla, Dr. Vibhuti Patel and other friends and colleagues at Vacha, who, based on their years of work with adolescent girls, felt the dire need for a book that compiles and analyses laws and policies related to adolescent girls. It is their vision that led to this publication.

I express my deep gratitude to Sonal Shukla, who reposed faith and confidence in me with this initiative. I have no words to express your quiet, unstinted support through the months of delay in research and writing due to crises in my personal life, except to say a big thank you from the bottom of my heart.

I am indebted to Dr. Vibhuti Patel, who guided and mentored me, from the time of conceptualizing the contents of this book. Your patient reading of each chapter and the critical inputs you have given, have certainly enhanced the quality of this book.

I owe a very sincere thanks to advocates Arvind Narain, Geeta Ramaseshan, Ramapriya Gopalakrishnan, Vijay Hiremath as well as Anagha Sarotdar for reading various chapters of this book and giving their feedback and suggestions, which have shaped the contents. Madhu Mehra and Partners in Law and Development have
contributed substantially to my understanding of state responsibility on gender issues within the framework of international human rights law, which enabled me to undertake an analysis of state responsibility vis-à-vis adolescent girls in this book.

This book has benefited from the positive energy and good will of many friends, colleagues and co-travellers in the world of human rights, who have been my sounding board on gender, law and human rights through the years. I apologize for the inability to name each of you but thank you warmly and deeply.

A heartfelt gratitude of the over 150 adolescent girls from underprivileged communities in Mumbai, who participated in a survey, and enthusiastically expressed their views and shared their dreams and aspirations on myriad issues discussed in this book. Undoubtedly, this book would be incomplete if you did not speak your mind, so that we could hear what you have to say on issues pertaining to you.

A warm thanks to Nischint Hora, Medhavinee Namjoshi and others in the Vacha team for conducting the survey with adolescent girls, as well as for important production-related work on this book. Needless to say, this book was possible due to the logistical and administrative support provided by the entire Vacha team, and I thank each one of them sincerely.

I sincerely appreciate my partner, Ram, for giving me the much-needed logistical support at home, and my children Sashwat and Sahaana who instinctively understood the importance of the work I had undertaken, and were undemanding of my time even when it was needed most.

**Abbreviations**

1. AIDS  Acquired Immuno Deficiency Syndrome
2. AIR  All India Reporter
3. ARSH  Adolescent Reproductive and Sexual Health
4. Art  Article
5. CAT  UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
6. CBSE  Central Board of Secondary Education
8. CERD  UN Convention on Elimination of Racial Discrimination, 1965
10. Cri LJ  Criminal Law Journal
11. Cr PC  Criminal Procedure Code, 1973
12. CSO  Civil society organisations
13. CWC  Child Welfare Committee, established under the JJA
| 14. DEVAW | UN Declaration on the Elimination of Violence Against Women |
| 15. DM | District Magistrate |
| 16. DMC | Divorce and Matrimonial Cases |
| 17. DV Act | The Protection of Women from Domestic Violence Act, 2005 |
| 18. EFA | Education for All |
| 19. FIR | First Information Report |
| 20. FNB | Food and Nutrition Board |
| 21. FYSP | Five Year Strategic Plan |
| 22. HIV | Human Immunodeficiency Virus |
| 23. HRD | Human Resource Development |
| 24. GR | General Recommendation |
| 25. HP | Himachal Pradesh - a state in India |
| 26. ICC | International Criminal Court |
| 27. ICCPR | International Covenant on Civil and Political Rights, 1966 |
| 28. ICDS | Integrated Child Development Services |
| 29. ICESCR | International Covenant on Economic, Social and Cultural Rights, 1966 |
| 30. ICMR | Indian Council of Medical Research |
| 31. ICPD | International Conference on Population and Development |
| 32. ICPS | Integrated Child Protection Scheme |
| 33. IPC | Indian Penal Code, 1860 |
| 34. ILO | International Labour Organization |
| 35. ITPA | Immoral Traffic Prevention Act, 1986 |
| 36. JJA | Juvenile Justice (Care and Protection of Children) Act, 2000 |
| 37. JJ Homes | Juvenile Justice homes |
| 38. MDG | Millennium Development Goals |
| 39. MMR | Maternal Mortality Rate |
| 40. MP | Madhya Pradesh - a state in India |
| 41. MTP Act | Medical Termination of Pregnancy Act |
| 42. MWCD | Ministry of Women and Child Development, Government of India |
| 43. NACO | National AIDS Control Authority |
| 44. NCERT | National Council of Education, Research and Training |
| 45. NCPCR | National Commission for Protection of Child Rights, a statutory body |
| 46. NCRB | National Crime Records Bureau (Ministry of Home Affairs, Government of India) |
| 47. NCW | National Commission for Women, a statutory body |
| 48. NDPS Act | Narcotic Drugs and Psychotropic Substances Act |
| 49. NFHS | National Family Health Survey |
| 50. NGO | Non-governmental organization |
| 51. NHRC | National Human Rights Commission, a statutory body |
| 52. NPC | National Policy for Children |
| 53. NPE | National Policy of Education |
| 54. OHCHR | Office of the United Nations High Commissioner on Human Rights |
| 55. PCPNDT | Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 |
| 56. PDS | Public Distribution System |
| 57. PEO | Programme Evaluation Organization, established by the Planning Commission, Government of India |
| 58. PIL | Public Interest Litigation |
| 59. PTA | Parents Teachers Association |
| 60. PUCL | People's Union for Civil Liberties |
| 61. PWD Act | The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act |
| 62. RCH | Reproductive and Child Health |
| 63. RTE | Right of Children to Free and Compulsory Education Act |
| 64. RTI | Right to Information Act |
| 65. SAARC | South Asian Association for Regional Cooperation |
| 66. SC | Supreme Court |
| 67. SCC | Supreme Court Cases |
| 69. SRCFS | UN Special Rapporteur on Contemporary Forms of Slavery |
| 70. SRTIP | UN Special Rapporteur on Trafficking in Persons, Especially Women and Children |
| 71. SRVAW | UN Special Rapporteur on Violence Against Women, Its Causes and Consequences |
| 72. STD | Sexually transmitted disease |
| 73. TISS | Tata Institute for Social Sciences, Mumbai |
| 74. TN | Tamil Nadu - a state in India |
| 75. TSC | Total Sanitation Campaign |
| 76. UDHR | Universal Declaration of Human Rights |
| 77. UGC | University Grants Commission |
| 78. UN | United Nations |
| 79. UNCED | United Nations Conference on Environment and Development |
| 80. UNDP | United Nations Development Program |
| 81. UNFPA | United Nations Population Fund |
| 82. UNICEF | United Nations Children's Fund |
| 83. UNIFEM | United Nations Development Fund for Women |
| 84. UNODC | United Nations Office on Drugs and Crime |
| 85. UP | Uttar Pradesh - a state in India |
| 86. UT | Union Territory |
| 87. Vs. | Versus |
| 88. WCD | Women and Child Development |
| 89. WCHR | World Conference on Human Rights |
| 90. WHO | World Health Organization |
Foreword

This book has emerged out of Vacha's work on girls' issues focusing on the formative years in the second decade of women's life. Girlhood is seldom considered as an important phase in itself in India. With exception of a section of middle and upper class urban girls, girlhood is largely used as a preparatory stage for traditional womanhood and wifehood. The alarming situation of girls in India cannot be overemphasized. And yet, we have no specific over all policy on girls or clarity on their rights. They are usually bracketed with women, children or youth, the last despite it being clear that youth or adolescence is mediated by gender.

Resource Centre for Women and Girls of Vacha Trust works for rights of women and girls. For many years now its major focus has been on facilitating girls in being active participants in their own empowerment. For this, it conducts training of teachers, social activists and others, produces research and creates resources. It has established girls' centres in several bastis/poor neighbourhoods in Mumbai and in outlying areas to implement programmes of girls' empowerment. This publication is part of the same process.

We are deeply thankful to Saumya Uma, the well known expert on gender and human rights, for undertaking this project of critically examining laws, policies and international conventions as they affect girls in India. We also thank Prof.
Vibhuti Patel for being with the process all through with her inputs and for writing the detailed introduction to the book. Vacha team, like many groups all over India, benefits from her commitment to women's studies and women's rights including girls' issues.

Sonal Shukla
Director
Vacha Resource Centre

Author's Note

The experience of adolescence for girls is vastly different from that for boys, particularly in the Indian context. For boys, adolescence is marked by financial independence, expanded participation in family, community and public life. In complete contrast, for girls, it marks a growing dependence on the natal and marital families, and restriction in speech, expression, thought, conduct and mobility, among others. Adolescence confines girls to socially-constructed gender roles of being wives and mothers, with limited participation in affairs outside the home. ¹

During the phase of adolescence, girls start menstruating; many are married and even give birth to their first child. For an adolescent girl, the importance of institutions of marriage and family are over-emphasized, trampling over her aspirations, dreams, needs and entitlements. In many instances, the socialisation process by which a girl is expected to be feminine to be accepted in society as a 'good woman' necessarily disempowers the adolescent girl, and strips her of a sense of identity and prevents her from realizing her fullest potential. It has been repeatedly observed that

¹ It is for this reason that programmes that aim to empower adolescent girls, such as those formulated by UNFPA, are premised on an understanding that the world is different for adolescent girls as compared with boys. For more details, see Gender Equality: Giving Special Attention to Girls and Adolescents, available at http://www.unfpa.org/gender/girls.htm, accessed 24 May 2012
adolescent girls are a neglected group. Additionally, they are a disempowered and under-valued group.

**CONTEXT**

World Health Organisation (WHO) defines adolescence in terms of age - between 10 and 19 years - while it uses "youth" to refer to the 15-24 years age group. These two overlapping groups together form 'young people' - aged between 10 and 24 years. It highlights special attributes during the adolescent phase, which include:

- Rapid physical growth and development;
- Physical, social and psychological maturity but not all at the same time;
- Sexual maturity and the sexual activity;
- Experimentation;
- Development of adult mental processes and adult identity; and
- Transition from total socio-economic dependence to relative independence.

The National Census 2011 projected 12.2 crore adolescents in India in the age group of 15 to 19 years, consisting of 6.5 crore boys and 5.7 crore girls. Adolescent girls do not form a homogenous community. While the biological, psychological needs and societal pressures faced by most adolescent girls in India may be similar, the experiences and challenges faced also vary according to the setting (rural / urban), caste, class, religion, sexuality, physical / mental challenges and other variables. The challenge faced and the issues to be addressed are also coloured by the environment of discrimination, segregation and exclusion that they live in, based on the inter-linkages of caste, class, religion and gender.

The critical concerns of adolescent girls are varied, and include meaningful education, vocational and life skills, economic independence, physical, reproductive and mental health, sexual rights and awareness, food and nutrition, safe housing, favourable conditions of work, recreation and physical security - a freedom from fear of violence. These cannot be effectively addressed without building the capacities of adolescent girls for self-esteem and confidence, autonomous decision-making, mobility and an exercise of agency. If adolescent girls are equipped with information and tools to assert their rights, they have the opportunity to realize their fullest potential.

**RATIONALE**

Adolescent girls face specific obstacles in enjoying their civil, political, social, economic and cultural rights to the fullest. These obstacles need to be addressed separately and effectively, with a full understanding of how laws, policies, programmes and schemes intended for their empowerment translate on the ground.

Often 'adolescent girls' are subsumed under children or women, or bracketed with youth. However their age and gender make them a special category with a specific sets of experiences, needs, obstacles and challenges, vulnerabilities, aspirations and entitlements. Where they are treated differently, more often than not, this is in relation to sexual and reproductive rights and health. However, adolescent girls are not only sexual beings or future wives and potential carriers of children; they are human beings in their own right, entitled to human rights guaranteed to all.

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Surely there are laws, policies, programmes, schemes, norms and standards that are favourable to adolescent girls. However, since there is a growing recognition of adolescent girls as a distinct group only in recent years, much of this body of law, policy and programmes is ensconced in the language of developmental needs of children and women, and in recent years, of youth. This book is an attempt to locate, extract, compile, highlight and analyze standards and practices that protect and promote human rights of adolescent girls in India. It aims to strengthen the use of such normative standards in discourses on adolescent girls' rights.

CONTENTS
This book discusses six crucial issues pertaining to adolescent girls' rights: health, education, right to and rights in work, age of marriage and agency in marriage, violence against girls and juvenile justice. In each of the chapters, international standards and principles as well as Indian law and policy pertaining to the same are discussed and critiqued. The penultimate chapter evaluates the Indian state's discharge of its obligations towards adolescent girls' rights on all the six issues, using an international human rights framework. The final chapter seeks to document and compile adolescent girls' thoughts and perspectives on their rights, lives and the world around them.

Though concerted effort was made to obtain the latest statistics on adolescent girls' lives from reliable sources, in many aspects, this was not available in the public domain. At the time of writing this book, only preliminary findings of the National Census of India 2011 have been released, which have been referred to in understanding the magnitude of issues faced by adolescent girls.

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Chapter 1
Introduction

Rights Of Adolescent Girls In India: A Critical Look at Laws and Policies by Saumya Uma is a timely publication about the most neglected segment of our society namely adolescent girls. Perceived as burden by their parents, neglected by policy makers, subordinated by patriarchal system, crushed before they bloom due to omnipresent misogyny; adolescent girls in India have to tread tight rope walk.

The author rightly avers that in India experiences of adolescence for girls are greatly different from that for boys. For boys, adolescence is marked by greater autonomy in decision making about career, financial independence, enhanced status and expanded participation in family, community and public life.

While for girls it is always differential treatment as compared to their male counterparts. Dr. Amartya Sen has highlighted seven types of inequalities that women and girls have to face throughout their life cycle—from womb to tomb. He states, “Burden of hardship falls disproportionately on women” due to seven types of inequality: mortality (due to gender bias in health care and nutrition), natality (sex selective abortion and female infanticide), basic facility (education and skill development), special opportunity (higher education and professional training), employment (promotion)
and ownership (home, land and property) and household (division of labour).  

**Author's Note** defines the analytical perspective informed by 'theory of social exclusion' that discusses six crucial issues pertaining to adolescent girls' rights: health, education, right to and rights in work, age of marriage and agency in marriage, violence against girls and juvenile justice.

In Chapter 2, while providing situational analysis on the subject, the author highlights major indicators for Status of Girls in India. She focuses on the most mind-boggling problems faced by adolescent girls such as decision-making in the day-to-day life, self-dependence and career. Dictatorial atmosphere in the family, educational institutions and in the community life, make adolescent girls feel left out of the decision-making processes affecting their lives. Hence it is very important to understand that,

"Inclusion is future,
Inclusion is trend,
Such as democracy,
Freedom and justice for all.
All means all,
No buts about it.

Inclusion is opposite of exclusion.
Inclusion is no to boycott.
Inclusion is a battle cry.

Challenge to the parents,
Child's cry for his/her existence...
For welcome, for embrace,
To be remembered fondly...for award
For gift of love...like surprise,
Like treasure.

Inclusion means clean game,
General knowledge, courtesy, hard work.

---

Inclusion is great in its simplicity,
And surprising in its complexity.
Instead of investing in jails,
mental asylums, hospitals, refugee camps,
To canalise resources for creating true homes,
True life, true human beings...
For humanising life.

*by Marsha Forest*

Both, in private and in the public spheres, we need to give more space for development to the adolescent girls.

The author has given detailed profile of health status of adolescent girls. For large majority of Indian girls, the cumulative effect of poverty, under nourishment and neglect is reflected by their poor body size/growth and narrow pelvis as they grow into adolescence, making child bearing a risk. Though child marriages are reducing, still nearly one fourth of girls are married before they complete 18 years. Ramifications of early marriage for the girl are devastating. During the last decade, increasing number of girls have been protesting against this evil custom by running away from home, approaching government officers and local police, teachers, writing essays and poems. One such poem expresses the grim reality faced by thousands of adolescent girls in India.

I am still of a tender age,
Don't get me engaged,
Let me reject this match;
The unhappiness that you have borne,
Mother, do not let me bear it,
I am still of a tender age,
Don't get me married.

**Chapter 3** On Law & Policy Framework shows the apathy of government towards adolescent girls. Even in the Youth Reports churned out by the Ministry of Youth Affairs hardly any serious consideration is given to rights of girls as

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1 Amartya Sen: "Many Faces of Gender Inequality", an inauguration Lecture for New Radcliffe Institute at Harvard University, 24-4-2001.
citizens. Most of the schemes and programmes for girls are
guided by stereotypical understanding of girls' role as future
wives and home-makers. The author has meticulously
described existing provision for girls in the law and critically
examined Minimum Legal Age as defined by National
Legislation in India. Education (including right to free and
compulsory education for ages 6-14, special provisions for
girls), Employment (such as labour laws regulating conditions
at work, abolition of bonded labour, prohibition / regulation
of child labour, maternity benefits, equal pay for equal work,
minimum wages), Health, food, nutrition, water & sanitation
(health laws including on mental health, disability, medical
termination of pregnancy, prohibition of sex-selective
abortions, food security etc.), Marriage (including religion-
based matrimonial laws addressing issues of age of marriage,
rights during marriage and upon its termination, law prohibiting
child marriage), Violence (criminal laws, law related to
juvenile justice, specific laws on SC / ST atrocities, trafficking,
witch hunting, child sexual violence etc.), Land, housing,
property rights, environment (such as laws related to
right to residence in matrimonial home, rent, tenancy,
ownership of land, forest rights). This chapter reflects an
encyclopaedic legal knowledge of the author on rights of
adolescent girls.

Adolescent girls’ struggle for formal and vocational education
is discussed in Chapter 4 titled "Education as a Tool for
Empowerment". The most challenging issue is drop out of
adolescent girls from school due to inability to pass in
Mathematics, Science and English. There is an urgent need
for bridge courses, remedial education, distance and IT
enabled courses, vocational training to be made available
to girls from marginalized sections. Industrial Training
Institutes run by Govt have strong gender-bias and give
training to girls only for beautician, secretarial practice,
stenography, COPA and tailoring, while boys get training
for hundreds of courses as follows:

<table>
<thead>
<tr>
<th>S. N.</th>
<th>Name of Trade</th>
<th>Engg. / Non Engg.</th>
<th>Duration</th>
<th>Entry Qualification</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Tool &amp; Die Maker</td>
<td>Engineering</td>
<td>3 Year</td>
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<tr>
<td>2</td>
<td>Draughtsman (Civil)</td>
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<td>2 Year</td>
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<tr>
<td>3</td>
<td>Draughtsman (Mechanical)</td>
<td></td>
<td></td>
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<tr>
<td>4</td>
<td>Fitter</td>
<td></td>
<td></td>
<td>10th passed</td>
</tr>
<tr>
<td>5</td>
<td>Turner</td>
<td></td>
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<td>Information Technology &amp; E.S.M</td>
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</tr>
<tr>
<td>7</td>
<td>Machinist</td>
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<td>10th passed</td>
</tr>
<tr>
<td>8</td>
<td>Refrigeration</td>
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<td>10th passed</td>
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<tr>
<td>9</td>
<td>Mech. Instrument</td>
<td></td>
<td></td>
<td>10th passed</td>
</tr>
<tr>
<td>10</td>
<td>Electrician</td>
<td></td>
<td></td>
<td>10th passed</td>
</tr>
<tr>
<td>11</td>
<td>Wireman</td>
<td></td>
<td></td>
<td>8th passed</td>
</tr>
<tr>
<td>12</td>
<td>Mechanic Motor Vehicle</td>
<td></td>
<td></td>
<td>10th passed</td>
</tr>
<tr>
<td>13</td>
<td>Mechanic Radio &amp; T.V.</td>
<td></td>
<td></td>
<td>10th passed</td>
</tr>
<tr>
<td>14</td>
<td>Mechanic Electronics</td>
<td></td>
<td></td>
<td>10th passed</td>
</tr>
<tr>
<td>15</td>
<td>Surveyor</td>
<td></td>
<td></td>
<td>10th passed</td>
</tr>
<tr>
<td>16</td>
<td>Pattern Maker</td>
<td></td>
<td></td>
<td>8th passed</td>
</tr>
<tr>
<td>17</td>
<td>Mechanic Agriculture</td>
<td></td>
<td></td>
<td>8th passed</td>
</tr>
<tr>
<td>18</td>
<td>Welder (Gas &amp; Electric)</td>
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<td>1 Year</td>
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<tr>
<td>19</td>
<td>Forger &amp; Heat Treater</td>
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<tr>
<td>20</td>
<td>Foundry Man</td>
<td></td>
<td></td>
<td>10th passed</td>
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<tr>
<td>21</td>
<td>Carpenter</td>
<td></td>
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<td>8th passed</td>
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<tr>
<td>22</td>
<td>Sheet Metal Worker</td>
<td></td>
<td></td>
<td>10th passed</td>
</tr>
<tr>
<td>23</td>
<td>Plumber</td>
<td></td>
<td></td>
<td>8th passed</td>
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<tr>
<td>24</td>
<td>Diesel Mechanic</td>
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<td>25</td>
<td>Mechanic Tractor</td>
<td></td>
<td></td>
<td>8th passed</td>
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<tr>
<td>26</td>
<td>Plastic Printing Operator</td>
<td></td>
<td></td>
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<tr>
<td>No.</td>
<td>Trade</td>
<td>Duration</td>
<td>Level of Education</td>
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<tr>
<td>27</td>
<td>Pump Operator</td>
<td></td>
<td>10th passed</td>
<td></td>
</tr>
<tr>
<td>28</td>
<td>Motor Driving-cum-Mechanic</td>
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<td>10th passed</td>
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<tr>
<td>1</td>
<td>Computer Operator &amp; Programming Assistant (COPA)</td>
<td>Non Engineering</td>
<td>1 Year</td>
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<tr>
<td>2</td>
<td>Stenography English</td>
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<tr>
<td>3</td>
<td>Stenography Hindi</td>
<td></td>
<td>12th passed</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Cutting &amp; Sewing</td>
<td></td>
<td>8th passed</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Book Binder</td>
<td></td>
<td>8th passed</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Dress Making</td>
<td></td>
<td>10th passed</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Secretarial Practice</td>
<td></td>
<td>10th passed</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Hair &amp; Skin Care</td>
<td></td>
<td>10th passed</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Fruit &amp; Vegetable Processing</td>
<td></td>
<td>10th passed</td>
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</tr>
<tr>
<td>10</td>
<td>Embroidery &amp; Needle Worker</td>
<td></td>
<td>8th passed</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Bleaching &amp; Dyeing Calico Print</td>
<td></td>
<td>10th passed</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Weaving of Fancy Fabric</td>
<td></td>
<td>8th passed</td>
<td></td>
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<tr>
<td>13</td>
<td>Letter Press Machine Mender</td>
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<tr>
<td>14</td>
<td>Hand Compositor</td>
<td></td>
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<td>15</td>
<td>Commercial Art</td>
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<td>10th passed</td>
<td></td>
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<tr>
<td>16</td>
<td>Manufacture Foot Wear</td>
<td></td>
<td>10th passed</td>
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<tr>
<td>17</td>
<td>Leather Goods Maker</td>
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</table>

Source: Directorate of Vocational Education, Government of India, 2012

**Chapter 5** on Girls at Work focuses on both paid and unpaid work of adolescent girls. In the intra-household distribution of labour, girls shoulder the major burden of economic, procreative and family responsibilities. NSSO, 1991 revealed that nearly 10% of girls were never enrolled in schools due to paid and unpaid work they had to do in homes, fields, factories, plantations and in the informal sector.2 Sexual abuse at the work place is a hidden burden that a girl worker endures. The child labour policies, however, do not spell out anything specific to girl child workers. There is no implementation of prohibition of girls working in hazardous occupations as per Child Labour (Prohibition and Regulation) Act, 1986. About 6% of the boys and girls in rural areas and about 3% males and 2% girls in age group 5-14 in urban areas were found to be working during 1993-94.3

Transnational Corporations and Multinational Corporations have long realised that the best way to reduce the wage bill and to enhance profits is to move parts of the production process to informal/unorganised sector of poorer countries like India, Sri Lanka, Bangladesh, Indonesia, the Philippines, Thailand, etc. The cheap labour of Asian adolescent girls and young women is regarded as the most lucrative way to enhance profits. Women in developing countries are a 'flexible' labour force. Their cheaper labour forms the basis for the induction of women into export industries such as electronics, garments, sports goods, food processing, toys, agro-industries, etc. They are forced to work uncomplainingly at any allotted task, however dull, laborious, physically harmful or badly paid it may be. A large number of poor adolescent girls looking for work within the narrow confines of a socially imposed, inequitable demand for labour have become ideal workers in the international division of labour. Globalisation is riding on the back of millions of poor girls and women and child workers in the margins of the economy.

The relationship between the formal sector and the decentralised sector is a dependent relationship. The formal sector has control over capital and markets, and the 'informal' sector works as an ancillary. In India, more than 90% of girls and women work in the decentralised sector.

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2. National Sample Survey Organization, Table 21-2, Delhi, 1991; s70-s119.
which has a high degree of labour redundancy and obsolescence. They have almost no control over their work and no chance for upward mobility because of the temporary and repetitive nature of the work. Another dead-end occupation that has absorbed the highest number of adolescent girls is domestic work in an extremely vulnerable, precarious and hazardous condition reminding of wage-slavery.

The shift from a stable/organised labour force to a flexible workforce has meant hiring women part-time, and the substitution of better-paid male labour by cheap female labour. The new economic policies provide State support to corporate houses that are closing down their big city units and using ancillaries that employ women and girls on a piece-rate basis. Home-based work by women and girls gets legitimised in the context of increasing insecurity in the community due to a growth in crime, riots, displacement and relocation. Sub-contracting, home-based production, the family labour system, all have become the norm. This is being called an increase in 'efficiency' and 'productivity'. The casual employment of urban working class girls and women in the manufacturing industry has forced thousands of women to eke out subsistence through parallel petty trading activities (known as 'informal' sector occupations). Adolescent working class girls are multi-tasking.

Chapter 6 provides the health profile of adolescent girls. The chapter examines factors that contribute to a healthy life. Health challenges concerning a girl child cover mortality, morbidity, nutritional status and reproductive health and linked to these are environmental degradations, violence and occupational hazards, all of which have implications for her health status. It is intricately related to the socio-economic status of the households to which she belongs. Due to the competing demands on their time and energy as well as their socialization, girls tend to neglect their health. The lesser access to food coupled with neglect invariably leads to a poor nutritional status and a state of ill health for most of the girls. Changing determinants in the survival struggles of girls have created an alarming situation that prevents India to meet the Millennium Development Goals.

Chapter 7 on Age of Marriage and Agency in Marriage is historiographically illuminating. It delineates volatile journey of Indian Women from late 19th century when Age of Consent debate had polarized public opinion between liberal humanists and cultural revivalists in the context of death of 11 year old Phulmani on the first night of her marriage due to forced intercourse in 1890 in Calcutta Presidency and Rakmabai case in Bombay Presidency.

In 21st century also many girls who are already in poor health, marry between the ages of 14 - 16. They bear children while still young and are malnourished themselves. An upswing of female deaths in the age group 15-19 years indicates the high mortality rate of teenage mothers. Nearly 45 % of Indian girls are married off before they attain majority. Child marriages and teenage pregnancy with and outside marriage are the major problems faced by girls in the developing world.

STD pathogens can more easily penetrate the cervical mucus of girls than that of older women. The cervix of a girl is more susceptible to gonorrhoeal and chlamydeous infection as well as to the sexually transmitted human papilloma virus (HPV), which causes cervical cancer. They may be even more reluctant than adults to seek treatment for STDs. Also, they may not know that they have a disease. They may be too embarrassed to go to a clinic, have no access to a clinic, or be unable to afford services. They are instead taken to unqualified traditional healers or obtain antibiotics from pharmacies or drug hawkers without proper diagnosis.

Chapter 8 is on violence against girls in their private and public lives. It shows that adolescent girls account for more than their share of abortion related complications and
deaths. Unwed pregnant girls (victims of rape, incest or seduction), turn to abortion, whether or not it is legal. Faced with unintended pregnancy, they take desperate measure resulting in health risks of unsafe abortions such as sepsis caused by unsanitary instruments or incomplete abortion, haemorrhage, injuries to genital organs such as cervical laceration and uterine perforation and toxic reactions to chemicals or drugs used to induce abortion. Domestic violence in parental and matrimonial home, battering, physical tears, death due to bleeding, rape, sexual harassment at home, workplace and public places, eve teasing, kidnapping and abduction, prostitution, sexual assault, molestation, rape, child sexual abuse, nuisance calls cause psychological disturbances among girls and women and throw major health burden on girls. The trauma of sexual violence sparks off tension and anxiety at a dangerous level. Women counselors working with girls have conveyed that their mental health problems are manifested in anxiety, fear, avoidance, guilt, loss of efficiency, lack of coordination, depression, sexual dysfunction, substance abuse, relieving the traumatic incidents through memory, suicidal attempts, eating disorders, disturbed sleep patterns, fear of encountering such situation once again. It is found that girls who undergo extreme sexual violence experience a loss of self and self-esteem following the shock inflicted on them. 

Incidents of child rape and abandonment have increased. Major problem in cases of crimes against girls is that of underreporting. Over and above crimes against girl child punishable under the Indian Penal Code (IPC), there are also special and local laws to prevent child labour, child marriage and immoral traffic prevention.

Pre Natal Diagnostic Technique (PNDT) Act 1994 has not been able to reduce sex-selective abortion of female foetuses.

Chapter 9 Engaging With The Juvenile Justice System brings out operation of The Juvenile Justice (Care and Protection of Children) Act 2000 that covers functioning of 5 types of institutions dealing with adolescents: Observation homes, Children's Homes, Special Homes, Shelter Homes and After care organizations. Bureaucratic lethargy, political vested interests, sexual exploitation of girls, embezzlement of funds earmarked for food, education, vocational training, and lack of transparency have eroded credibility of the Act. NGOs and social work institutions are the only conscience keepers.

Chapter 10 on State responsibility locates framework of state responsibility under international human rights law. National Commission for Children has a special mandate for girls. The very first sentence in the chapter aptly projects needs and aspirations of adolescent girls, "Adolescent girls are not merely "claimants" or "beneficiaries" of pre-defined rights; they play an important role in defining the contents of rights."

Chapter 11 on "Claiming Ownership of the Future: Some Adolescent Girls' Visions" brings out voices of girls through survey research based on a representative sample of 112 adolescent girls from underprivileged communities in Mumbai conducted by Vacha team led by Nischint Hora, Medhavini Namjoshi, Yagna Parma and Amrita De. The study was conducted in September - October 2012. The main highlights of the study speak volumes about agency of adolescent girls who are convinced about the importance of education for empowerment; perceive child / early marriages as a major impediment to their growth; aspire to be economically independent in their future life; are extremely concerned about personal safety and security; deplore honour crimes and assert the right of girls to choose their life partners; are conscious of societal discrimination and injustice against girls, and wish to see it eradicated; do not give adequate importance to aspects of health, food and nutrition; feel positive about government schemes, but also emphasize the need for increased focus on education and personal safety of girls; reiterate the need for proper implementation of laws;
cherish spending time with friends, going out, playing and studying; wish to focus on personality development and improving life skills, such as acquiring self-confidence and skills in independent decision-making; and believe that self-assertion of rights is a key to their empowerment.

Rapid changes in the socio-economic and cultural reality, parental expectations, values and norms, rising levels of competition and pressure during examination time and a breakdown of traditional family structures are factors that accelerate this alarming trend. Examination related anxiety results into sharp rise in girls hurting themselves deliberately, leaving homes or killing themselves. Fear of failure is a root cause of all qualms. Parents who want their children to develop high self-esteem should make a point of treating them with respect and dignity. Concept of fiscal hygiene is important for girls to understand the value of clean money earned through hard work. Today's adolescent girls are at the crossroads. But every crossroad leads to new roads. Information revolution has made adolescent girls more aware and precocious. They have to enhance their knowledge base. Broadening one's personal horizons is a sure way of tackling the crisis within oneself. Today's girls find the values instilled in them since their childhood, hollow in real life. Romance is found utilitarian and consumerist. The economic security is bleak, emotional security is becoming a victim of uncertain times. Globalisation has led to the emergence of apparently homogeneous life-styles, necessities and comforts through media-images, whereas the reality of life is pathetically at variance with resources required to maintain such a life. This has further deepened the crisis of the adolescent girls.

Let the Girls Bloom
Adolescent girls are surpassing earlier milestones in the area of education, vocation, sports and cultural activities by displaying tremendous grit and hard work. They are setting new benchmarks in their success stories in spite of socio-economic and cultural hurdles. Now the state and civil society need to remove the institutional and cultural constraints so that the adolescent girls can realise their dreams. Providing good and healthy role models for adolescent girls is very important.

Prof. Vibhuti Patel, 
SNDT Women's University, Mumbai
Chapter 2
Adolescent Girls In India: 
A Situational Analysis

Nearly 20% of the world population of adolescent girls is 
in India. They account for nearly 11% of India's population, 
yet remain an invisible group. In numbers, the National 
Census 2011 projected 12.2 crore adolescents in India in 
the age group of 15 to 19 years, consisting of 6.5 crore boys 
and 5.7 crore girls. This does not include the younger 
adolescent group - girls between the ages of 10 and 14.

A. A STATUS REPORT ON ADOLESCENT GIRLS

One of the important indicators of the status of girls in the 
Indian society is the male-female ratio. The ratio of females 
to males has been deteriorating from 971 (in 1981) to 945 
(in 1991) to 927 (in 2001) and 914 (in 2011) - the lowest 
since independence. Between the 2001 and 2011 census, 
due to pro-active interventions of states, women's 
organizations and health professionals, the sex ratio improved 
in the states of Punjab, Haryana, Himachal Pradesh, 
Gujarat, Tamil Nadu, Mizoram and Andaman and Nicobar 
Islands, while in all other 27 states of the country, there 
have been a decline in the sex ratio during the last decade.

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Ray, Kalyan. 'Govt to Give Iron, Folic Acid to 12 Crore Young Girls', 
Deccan Herald, 25 December 2011

The 2011 census found that there were 158 million infants 
and children, out of which 82 million were males and 76 
million were females. The deficit of 6 million female infants 
and children is attributed to the widespread use of sex-
selective abortions and female infanticide. Dr. Amartya Sen, 
in his famous article "Missing Women", has proven through 
statistics that during the last century, more than a 100 million 
women have been missing worldwide due to 'discrimination 
leading to death' - gender bias in mortality as a result of 
sex selective abortions, female infanticide and insufficient 
care given to girls. It is believed that atleast 50 million 
women and girls are 'missing' in India.

While it is not true that a healthy male-female ratio would 
assure equality and non-discrimination of adolescent girls, 
the skewed ratio is a clear manifestation of the son-
preference and daughter-repulsion prevalent in the Indian 
society, which threatens the birth and existence of girls in 
the first place, as well as the health of the mother. Continued 
devaluation of girls leads to many forms of discrimination, 
violece, exploitation and abuse throughout their life span, 
including during adolescence.

A1. Literacy & Education

Literacy level and educational attainment are important 
indicators of social development of any group of people. 
The literacy rates among women and girls has shown a 
steady increase over the decades. Census of India 2001

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2. Sen, Amartya Kumar. (1992), 'Missing women', British Medical 

3. See for example Swami Agnivesh, Rama Mani and Angelika Köster-
Lossack, "Missing: 50 million Indian girls," in International Herald 
opinion/edswami.php, now held at the Geneva Centre for Security 
Policy, http://www.gcsp.ch/e/publications/Issues_Institutions/Asia/ 

4. For the purposes of Census, a person aged seven and above, who 
can both read and write with understanding in any language, is 
treated as literate.

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reveals that while the literacy rate was 76% for men, it was 54% for women and girls. The 2011 Census indicates 82% literacy rate for men and 65% for women. The gender gap between males and females has also reduced - from 22% in 2001 to 17% in 2011. However, it is still considerably short of the targeted 10% gender gap that the eleventh Five Year Plan aims at by 2011-2012.

The educational status of adolescent girls in India can be better understood by examining the gross enrolment ratio in schools for all students, disaggregated by primary, middle and high schools. 2006-7 statistics in this regard are as follows:

<table>
<thead>
<tr>
<th>Age / Class</th>
<th>Boys</th>
<th>Girls</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>6-11 years, Class I - V</td>
<td>114.42</td>
<td>107.82</td>
<td>111.24</td>
</tr>
<tr>
<td>11-14 years, Class VI-VIII</td>
<td>77.41</td>
<td>69.51</td>
<td>73.63</td>
</tr>
<tr>
<td>14-18 years, Class IX - XII</td>
<td>44.42</td>
<td>36.41</td>
<td>40.62</td>
</tr>
</tbody>
</table>


Figure 2A: Trends in Net Enrolment Ratios in India in percent, 2001-2007

Table 2.1 above indicate that enrolment of girls in primary schools is drastically improving and is catching up with boys. It is important to take note of the fact though, that enrolment rates do not necessarily reflect on, and are considerably higher than the attendance rates. The enrolment rates also do not reflect the drop out of a student during the course of the year. Thus the school net attendance rates are a better indicator, and are illustrated in the graph below.

Figure 2B: Trends in Primary and Secondary School Net Attendance rates by Sexes: 2005-6

As seen in Figure 2B above, while there is a drop in secondary school net attendance of both boys and girls as compared to primary school, the drop is sharper among girls. This is a big challenge that India faces today - the dropout of adolescent girls from attending schools. About one third of all girls drop out of school. Factors contributing to this situation are discussed in Chapter 4 of this book. Preventing adolescent girls from dropping out of school is an issue that warrants immediate attention. Further, adolescent girls are not a homogenous group, and disparities in literacy and education exist, based on grounds including

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6. National Family Health Survey (NFHS-3), 2005-6
religion, caste, state, region and per capita income.\(^7\)

**A2. Girls in Gainful Employment**

A considerable amount of work contributed by women and girls is unpaid labour (as it is not valued in monetary terms) and yet, such work is extremely important for the functioning of any economy. Such unpaid work includes domestic work, including cooking, cleaning, giving birth to and bringing up children, taking care of the sick and the elderly. The unpaid and unregulated nature of such work indicates that it is a sphere where exploitation is at its maximum, and the recourse for women and girls at its minimum. The present situation analysis will, however, focus on the paid work of adolescent girls.

The advent of industrialisation and modernisation has led to an increasing work participation rate of women, which was 19.7% in 1981 and rose to 25.7% in 2001. However, this is still low compared to male work participation rate, which was 52.6% in 1981 and 51.9% in 2001. An analysis of the labour force based on age groups and sex, gives an indication of the number of adolescent girls in the labour market. Table 2.2 below shows that nearly 55 lakhs of adolescent girls in the age groups of 15 to 19 years work as main workers, and over 59 lakhs of adolescent girls in the same age group work as marginal workers supplementing the family income. The number of adolescent girls in the age group of 10-14 is considerably lesser in the labour force: nearly 19 lakhs as main workers and over 31 lakhs as marginal workers. These statistics are an indication of the enormous number of adolescent girls who are engaged in gainful employment in India.

2006 data from Population Reference Bureau indicates that 35% of girls and 50% of boys are economically active in the age group 15-19 years.\(^8\) National Family Health Survey (NFHS) 3 indicates that around 30% of adolescent girls in urban areas participate in economic activity.\(^9\) It is commonly assumed that while adolescent boys go into paid economic work, adolescent girls engage in domestic activities. However, statistics show that this pattern has undergone a change due to economic pressures faced by families, and the consequent re-adjustment of parents' expectations from adolescent girls.\(^10\) Studies highlight the gross underestimation of adolescent girls' labour due to a variety of reasons such as varied definitions of work, as well as the failure to count a large number of adolescents, especially girls who are out of school and working at home, in family enterprises, in the unorganised sector or are street children.\(^11\)

The prevailing patriarchal mindset as well as the special needs of adolescent girls at work due to the vulnerability they face, coupled with the increased participation of such girls in the workforce warrant a positive response from the legal machinery. Laws that protect and promote adolescent girls' rights at the workplace would prevent, prohibit and provide redress for discrimination, harassment and exploitation from being meted out to them. Moreover, law and policy also plays an important role in compelling employers to provide appropriate support systems and services and ensure gender-inclusive practices at the workplace, in order to enable the girls to work in a productive manner.

Additionally, economic participation of adolescent girls and young women is mooted as a pragmatic anti-poverty strategy for India which has a large population of adolescent girls. Literature on economic development in India is increasingly indicating that the labour force participation of adolescent girls and young women as a critical strategy for

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\(^7\) For more details, see UNICEF (2011), pp. 23-28

\(^8\) The World Youth 2006 data sheet, Population Reference Bureau, Washington DC

\(^9\) NFHS-3, 2005-2006

\(^10\) Dasra (2012), p. 9

poverty reduction. The economic data available suggests that India loses US$ 56 billion a year in lost potential earnings because of adolescent pregnancy, higher secondary school dropout rates, and joblessness among young girls. The logical corollary to this is that the government, the private sector and the multinational companies have an important role to play towards improving the status of the adolescent girl and make her a key participant in the national economy, by addressing her needs and protecting her rights at the workplace. Chapter 5 discusses laws and policies that seek to protect this large group of adolescent girls in the context of work, and issues that arise from the same.

Table 2.2: Workers In India, by Age, Sex and Place

<table>
<thead>
<tr>
<th>R/U/T Age Group</th>
<th>Worker total</th>
<th>Worker male</th>
<th>Worker female</th>
<th>Marginal workers total</th>
<th>Marginal workers male</th>
<th>Marginal workers female</th>
</tr>
</thead>
<tbody>
<tr>
<td>10-14 Rural</td>
<td>87,56,427</td>
<td>25,27,984</td>
<td>16,37,443</td>
<td>55,56,500</td>
<td>25,37,732</td>
<td>30,18,768</td>
</tr>
<tr>
<td>Urban</td>
<td>7,53,14</td>
<td>5,61,809</td>
<td>2,31,765</td>
<td>3,01,256</td>
<td>1,74,348</td>
<td>1,26,308</td>
</tr>
<tr>
<td>Total</td>
<td>49,11,841</td>
<td>30,89,793</td>
<td>18,69,148</td>
<td>58,57,756</td>
<td>27,12,680</td>
<td>31,45,076</td>
</tr>
<tr>
<td>15-19 Rural</td>
<td>11,63,32,967</td>
<td>1,16,59,849</td>
<td>47,33,118</td>
<td>1,07,71,622</td>
<td>51,59,377</td>
<td>56,12,245</td>
</tr>
<tr>
<td>Urban</td>
<td>42,49,449</td>
<td>35,08,133</td>
<td>7,41,316</td>
<td>9,75,524</td>
<td>6,62,203</td>
<td>3,13,321</td>
</tr>
<tr>
<td>Total</td>
<td>52,06,42,416</td>
<td>1,51,67,982</td>
<td>45,74,434</td>
<td>11,47,116</td>
<td>58,21,540</td>
<td>59,25,566</td>
</tr>
</tbody>
</table>

Source: Statistics on Women in India 2010

The Indian government concedes that the work environment in both the formal and informal sectors remains exploitative and harmful, especially for young persons. This is also true for girls whose work largely remains hidden, unpaid, low or unskilled and menial. One of the most exploitative aspects is child labour. UNICEF describes child labour as "one of the cleanest and worst manifestations of how poverty has a child's face". According to a special report on the girl child and labour by International Labour Organisation (ILO) more than 100 million girl children between the ages of 5 and 17 are engaged in child labour, out of which over 50% of them are in hazardous industries, and 20% of those are below twelve years old. It is hard to get correct statistical information about girl child labour since the kind of the work girls undertake is more invisible than that of boys. In India, the 2001 Census estimates the number of child labourers in India to be about 12.7 million, a figure which experts say is grossly understated, as many cases of child labour go unreported due to work in the 'underground economy'. Statistics indicate that over 80 per cent of child labourers are found in the rural sector, whereas only less than 20 per cent are found in the urban sector. The rural girl child labourer is mostly engaged in agriculture and in household activities as compared to a female urban child labourer, who works in the informal and unorganized sector, including small scale cottage industries and factories. Typical home-based works for girls are bidi rolling, carpet waving and handicrafts. Performing these tasks, they are most often under the care and watch of their parents who involve them in their work, and who receive the wages for the work done by the girls. The girl child labourer is also found in domestic work and prostitution, in urban and rural areas.

14 Planning Commission, Government of India, p. 45
15 UNICEF (2001), p. 10
Adolescent girls are also deeply impacted by the exploitative practices of bonded labour. A 1995 report on bonded labour in Tamil Nadu gives an indication of the problem and its impact on girls: At the instance of the Supreme Court, a two-member commission, after an expansive survey, concluded that there were over one million bonded labourers in the state of Tamil Nadu, spread over 23 districts and 20 occupations, of which 10% were child labourers, with a higher number of girls. Another government-appointed Commission has highlighted bondage labour among women and girls, on account of social and economic factors, in the form of joginis of Andhra Pradesh and devdasis of Karnataka.

Girls are also targeted for sexual harassment at their places of work. A study by the National Labour Institute recorded 5,671 reported cases of sexual harassment at the workplace in 1996, which grew to 10,950 in 2007 - a growth of 93 per cent. However, this is only indicative of a larger malaise as thousands of cases go unreported due to the stigma attached, the economic dependence of the girl on her job and other reasons. Studies conducted by National Commission for Women indicate that about 47% of working women and girls in India have experienced some form of sexual harassment over the course of their work. Another source indicates that on an average, someone is sexually harassed every hour. There are no definitive statistics on the number of adolescent girls who have been sexually harassed at the workplace in India.

A3. Health, Food and Nutrition

Some important aspects of the overall health and nutrition status of adolescent girls are as highlighted below:

- Uneven educational opportunities, compulsion to work at home and outside, poor access to nutritious and adequate food, poverty, gender discrimination, increasing stress (both school-going and out of school adolescents) and the onset of puberty (with its accompanying biological/physiological changes) contribute to a range of health issues faced by adolescent girls.

- Statistics indicate that while the overall mortality rate is on the decrease, in the age groups, of 15-19 years and 20-24 years, which are the child-bearing groups, female mortality rate is substantially higher. This can be attributed to early marriages and health complications during pregnancy and child birth, as well as the prevailing gender discrimination that prevents effective responses to health needs of adolescent girls.

- India has a high prevalence of adolescent anaemia. Out of 5.7 crore girls in the age of 15 to 19 years, as projected by the National Census 2011, about 3.2 crore girls are anaemic. The high incidence of anaemia among teenaged girls, results in poor physical growth, reduced school performance, diminished concentration in daily task and work output resulting in lower earning capacity. Additionally, it enhances the risk of maternal deaths, as well as causes problems in reproductive and child health. A 2009 Indian Statistical Institute study covering 177,670 girls from 35 states and union territories

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19 Srivastava, Ravi S. (2005), pp. 5-6
20 Ministry of Labour, Government of India (1991), pp. 100-114
21 Verma, Anuradha. 'Are you being Sexually Harassed?'; The Times of India, 8 Aug 2011
found the highest prevalence of anaemia (99.9 per cent) in the state of Jharkhand.

- Adolescent girls suffer from frequent illness due to malnutrition, anaemia and micro-nutrient deficiency;
- 45% of the girls suffer from stunted growth as opposed to 20 per cent of boys. This is attributed to malnutrition;26
- Due to dietary deficiencies, adolescent girls do not achieve their potential weight and height. Also, 35 per cent of rural adolescent girls have a weight below 38 kg and a height below 145 cm.27 Undernourished girls grow into undernourished adult women and continue a vicious cycle of under-nutrition and poor health.
- The root cause of malnutrition amongst girls is not only poverty and the lack of accessibility to nutritious food, but also the lack of value attached to girls. Discriminatory feeding practices reveal:28
  - Girl's nutritional intake is inferior in quality and quantity;
  - Boys have access to more nutritious food;
  - Boys are given first priority with the available food within the family;
  - Female infants are breastfed less frequently, for shorter duration and over a shorter period than boys. Therefore, gender discrimination results in the malnutrition of a large number of adolescent girls, leading to their poor health.
- Due to social pressures to protect adolescent girls, parents force their daughters into marriage at a young age - this has an adverse effect on the physical, psychological and sexual health of girls;
- Youth fertility accounts for more than half of India's total fertility, with 44% of married women in the 15-19 age group having one or more children.29 According to the National Census of India 2001, there are about 300,000 teenage mothers, some giving birth for the second time. With their bodies underdeveloped and malnourished, early childbirth leads to the death or morbidity among adolescent girls.
- About one third of the currently married women in the age-group 15-49 years have Body Mass Index (BMI) less than 18.5 kg/m2 and about 47 per cent girls in the age-group 15-19, have BMI less than 18.5 kg/m2.30 Both factors (anaemia and low BMI) are inter-connected with low birth weight of infants and with increased risk of maternal deaths. This highlights the need to have focused interventions for improving maternal nutrition and adolescent anaemia. One of the targets of the Government of India's 11th Plan is to reduce by 2012 the anaemia-prevalence rate among women between 15-49 years of age.
- Adolescent girls are subjected to discrimination and violence, including domestic violence, which have an adverse effect on their physical and mental health. At least 32% married women in the age group of 15-24 reported sexual violence and 25% reported physical violence;31
- Adolescent girls are also at risk of contracting sexually transmitted diseases and HIV/AIDS, due to sexual violence and the lack of power to negotiate for

26 Sub-group report, p. 5
27 Ibid
28 Ibid
29 NFHS 3, 2005-2006
31 International Institute for Population Sciences (IIPS) and Population Council. 2010, p. 19
contraception and other protective measures during sexual contact;

- Restrictions on mobility and play lead to a lack of fitness;

- Heavy domestic work such as collecting firewood/water from long distances, coupled with malnutrition and anaemia, contribute to poor health of adolescent girls;

- A recent study indicates that one in seven young women in the age group of 15-24 may be suffering from mental disorders, and that young women in Rajasthan, Jharkhand and Maharashtra than other states were more likely to report symptoms or behaviours suggestive of mental health disorders;32

- Counselling is intricately linked to mental health of adolescent girls, and is an unmet need. If the psychological needs of adolescent girls are not met, it would adversely affect their mental, social and emotional behaviour. The concerns of adolescent girls, for which counselling is required, include:
  - Physical/Health (food & nutrition, psycho-somatic ailments, general health, physical exercises, etc.);
  - Familial (understanding, sharing and security within the family. Time, love and attention given for decision making);
  - Financial (cost of education, health, recreation, etc.)
  - Psychological (Nervousness, lack of confidence, anxiety, etc.)
  - Social (friendship, sharing relationship with friends/teachers and coping with sexual drives);
  - Emotional (anger/aggression, depression, loneliness, insecurity and feeling of guilt); and
  - Academic (concentration, time-management, examination phobia, memory, study habits, etc.)

A4. Early Marriage of Adolescent Girls: Magnitude & Consequences

In 2000 the UN Population Division recorded that 9.5% of boys and 35.7% of girls aged between 15-19 were married.33 The National Family Health Survey (NFHS-3) data indicates that more than one-quarter (27% percent) of Indian women age 20-49 married before age 15, and over half (58 percent) married before the legal minimum marriage age of 18.34 There has been a steady rise in age at first marriage, which is reflected in the gradual decline in the proportion of women married by ages 15, 18, and 20 years from the oldest to the youngest age groups. However the study notes that a considerable proportion of women still marry below the legal minimum age at marriage.35 The data also shows a steady increase in age at marriage with increasing education.36 The proportions of women who marry before the legal minimum age at marriage are considerably lower among urban residents than among rural residents in all states, with the exception of Goa.37 There are wider inter-state variations in the proportion of girls married before 18 years, ranging from 11% in Goa to 64% in Bihar.38 The data also varies with the religious community, with the lowest age at marriage being among Hindu girls and Muslim girls (16.7 years).39

Under-aged marriages have a specific gender dimension, and the adverse effects of such marriages are disproportionately higher on girls. Early marriage of adolescent girls denies them the right to education and an

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32 Ibid, p. 23
34 NFHS 3, p. 163
35 Ibid at p. 164
36 Ibid at p. 165
37 Ibid at p. 167
38 Ibid at p. 166
39 Ibid at p. 165
all-around development, the opportunity to discover themselves, their skills and aptitude, their voices and future aspirations. Early marriage compels the adolescent girl to assume the roles and responsibilities of an adult married woman before she is mentally, emotionally and physically ready to do so, which adversely impacts the girl’s mental and physical health and autonomy. Studies suggest that girls who married before the age of 18 were less likely than those married after 18 to have been involved in planning their marriage, reject wife-beating, use contraceptives to delay their first pregnancy, or have their first birth at a health facility. A study has shown that India has the highest rate of “domestic violence among women married by 18 with a rate of 67 per cent, compared to 45 per cent of women who had not experienced violence.”

Though many adolescent girls engage in sexual activity prior to / independent of marriage, early marriage, most definitely, translates into early sexual activity and pregnancy, which is physically and emotionally harmful for adolescent girls as well as their children. This is because for many under-aged girls, marriage is the beginning of sexual activity - often forced and unprotected - with possible sexual and reproductive ill-health including HIV / AIDS. Further, many get pregnant, as they are under a pressure to demonstrate their fertility, leading to higher incidence of maternal mortality, infant mortality and other health risks related to pregnancy and child birth of adolescent girls. Maternal mortality among adolescent girls is found to be two to five times higher than for adult women. Thus, logically, delaying the age of marriage and first pregnancy gives girls greater opportunities to develop their potential before taking on responsibilities associated with adulthood.

The ramifications of early marriage of adolescent girls, leading to a grave violation of their human rights, are summarized in Figure 2C below:

**Figure 2C: Ramifications of Early Marriage for the Girl**

Not all marriages of minor girls are forced marriages. There is an increasing phenomenon in India of minor girls and young women eloping and getting married with a partner of their choice, due to the non-acceptance of such marriages by their families. As Table 2.3 below shows, a high number of incidents of kidnapping / abduction are recorded for girls in the age group of 15-18. This indicates the response of agitated parents of adolescent girls who chose to elope with a partner of their choice, with parents attempting to regain control over their girls using the law and state machinery. Honour crimes in the context of choice marriages are also more visible in recent times, though there is no official and systematic data collection in place as yet.

A5. Violence Against Girls: Forms & Magnitude

While adolescent girls are also subjected to the forms of violence that adult women are, they are additionally vulnerable to certain forms of violence, including trafficking, honour
crimes and acid attacks. Girls who dare to step out of established social norms and choose their own life partners, or who assert their sexualities, are targeted for violence and denial of rights by the family and community at large. Girls who turn down the advances of boys are vulnerable to various forms of attacks. Dalit girls who seek higher education, jobs and social mobility are often targeted for violence by the upper classes that seek to maintain status quo. Adolescent girls in conflict situations and those belonging to religious minority groups in contexts of communal violence, are deprived of a peaceful and fruitful adolescence, and are vulnerable to sexual and gender-based violence. Violence is also inflicted on girls who are physically or mentally challenged, as well as those in custodial situations such as hospitals, welfare and child care institutions, by taking advantage of the increased vulnerability of girls in such contexts.

Forms and manifestations of violence against girls vary depending on the specific social, economic, cultural and political context within the country. New technologies have generated new forms of violence, such as cyber crimes and crimes against girls using the mobile telephone. Consequently, no list of forms of violence against girls can be exhaustive. Violence against girls include physical, sexual and psychological/emotional violence as well as economic abuse and exploitation, perpetrated in a range of settings.

Younger women and adolescent girls are especially vulnerable to sexual and gender-based violence. The worldwide statistics indicate that nearly 50 per cent of all sexual assaults worldwide are against girls who are 15 years or younger.43 High numbers of young women report that their first sexual experience was coerced.44 Women who have been sexually abused once are more likely to suffer it again: 60 per cent of women whose first sexual experience was forced experienced sexual violence later in their lives.45 Sexual abuse and incest in childhood can have lifelong effects on sexual behaviour and reproductive health.46

In India, in the statistics compiled by the National Crime Records Bureau, published each year as 'Crime in India', a chapter on crimes against adolescents is conspicuous by its absence.47 A compilation of various data disaggregated by age and sex indicates the following picture of crimes against adolescent girls:

- Kidnapping and abduction of girls, in the 10-15 years and 15-18 years category, is substantially more than that of boys, as well as that of girls in most other categories of crimes;
- Data for buying and selling of minor girls for prostitution is abysmal, indicative of a low registration of FIRs for such crimes;
- Rape of girls, both in the 10-14 years and 14-18 years categories, has increased substantially in 2011 as compared to 2010;
- Incest rape for the age group of 14-18 years has increased in 2011 as compared to 2010.

Statistics related to crimes against adolescent girls are given in Table 2.3 below. These do not include emerging crimes against adolescent girls, such as cyber crimes, molestation, sexual harassment in public places and in the workplace,

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43 UNFPA. (2003)
47 Statistics published by the National Crime Research Bureau, Ministry of Home Affairs, Government of India, has chapters on crimes against children, crimes against women, crimes against persons belonging to SC / ST but no chapter on crimes against adolescents. Crimes against children are further not desegregated by sex and age, making it difficult to call out statistics related to adolescent girls.
acid throwing and crimes in the name of honour, as no official data is available on the same.

### Table 2.3: Crimes Against Adolescent Girls in India 2010 & 2011: An Overview

<table>
<thead>
<tr>
<th>Crime</th>
<th>Age Group</th>
<th>2010</th>
<th>2010</th>
<th>2010 Total</th>
<th>2011</th>
<th>2011</th>
<th>2011 Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Male</td>
<td>Female</td>
<td>Total</td>
<td>Male</td>
<td>Female</td>
<td>Total</td>
</tr>
<tr>
<td>Murder</td>
<td>10-15</td>
<td>221</td>
<td>134</td>
<td>355</td>
<td>205</td>
<td>128</td>
<td>333</td>
</tr>
<tr>
<td></td>
<td>15-18</td>
<td>372</td>
<td>194</td>
<td>566</td>
<td>382</td>
<td>228</td>
<td>609</td>
</tr>
<tr>
<td>Culpable homicide not amounting to murder</td>
<td>10-15</td>
<td>40</td>
<td>30</td>
<td>70</td>
<td>50</td>
<td>21</td>
<td>71</td>
</tr>
<tr>
<td></td>
<td>15-18</td>
<td>78</td>
<td>45</td>
<td>123</td>
<td>102</td>
<td>53</td>
<td>155</td>
</tr>
<tr>
<td>Kidnapping &amp; abduction</td>
<td>10-15</td>
<td>1229</td>
<td>1999</td>
<td>3228</td>
<td>1239</td>
<td>3027</td>
<td>4266</td>
</tr>
<tr>
<td></td>
<td>15-18</td>
<td>731</td>
<td>6422</td>
<td>7153</td>
<td>987</td>
<td>10,115</td>
<td>11,102</td>
</tr>
<tr>
<td>Buying of minor girls for prostitution Below</td>
<td>18</td>
<td>-</td>
<td>78</td>
<td>-</td>
<td>-</td>
<td>27</td>
<td>-</td>
</tr>
<tr>
<td>Selling of minor girls for prostitution Below</td>
<td>18</td>
<td>-</td>
<td>130</td>
<td>-</td>
<td>-</td>
<td>113</td>
<td>-</td>
</tr>
<tr>
<td>Procuration of minor girls Below</td>
<td>18</td>
<td>-</td>
<td>679</td>
<td>-</td>
<td>-</td>
<td>862</td>
<td>-</td>
</tr>
<tr>
<td>Rape</td>
<td>10-14</td>
<td>-</td>
<td>1345</td>
<td>-</td>
<td>-</td>
<td>1707</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>14-18</td>
<td>-</td>
<td>3491</td>
<td>-</td>
<td>-</td>
<td>4646</td>
<td>-</td>
</tr>
<tr>
<td>Incest rape</td>
<td>10-14</td>
<td>-</td>
<td>59</td>
<td>-</td>
<td>-</td>
<td>48</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>14-18</td>
<td>-</td>
<td>79</td>
<td>-</td>
<td>-</td>
<td>102</td>
<td>-</td>
</tr>
</tbody>
</table>


### A6. Adolescent Girls in the Juvenile Justice System

**Juveniles in Conflict with the Law**

Juveniles in conflict with the law is the term used to describe those persons under 18 years of age who are accused of/convicted for criminal offences. In conformity with the international trend, in India too, girls have remained a small portion of the juvenile justice population. Table 2.4 below shows the total number of juveniles who have been apprehended under the Indian Penal Code as well as special legislations during the years 2001 to 2011. It shows that girls make up 5% - 7% of the total juveniles. In numbers, the girls arrested vary from about 1500 to 2400 per year. In fact, the number and percentage of girls apprehended and accused of crimes shows an overall downward trend, though between 2008 to 2009 and 2010 to 2011, there seems to be a sharp increase in the number and percentage of girls among juveniles in conflict with the law.

### Table 2.4: Juveniles Apprehended under the Indian Penal Code & Special Laws 2001-2011

<table>
<thead>
<tr>
<th>Year</th>
<th>Boys</th>
<th>Girls</th>
<th>Total</th>
<th>Percentage Of Girls</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
</tr>
<tr>
<td>2001</td>
<td>3129</td>
<td>2333</td>
<td>33628</td>
<td>6.9</td>
</tr>
<tr>
<td>2002</td>
<td>3355</td>
<td>2228</td>
<td>35779</td>
<td>6.2</td>
</tr>
<tr>
<td>2003</td>
<td>30985</td>
<td>2335</td>
<td>33320</td>
<td>7.0</td>
</tr>
<tr>
<td>2004</td>
<td>28878</td>
<td>2065</td>
<td>30943</td>
<td>6.7</td>
</tr>
<tr>
<td>2005</td>
<td>30606</td>
<td>2075</td>
<td>32681</td>
<td>6.3</td>
</tr>
<tr>
<td>2006</td>
<td>30375</td>
<td>1770</td>
<td>32145</td>
<td>5.5</td>
</tr>
<tr>
<td>2007</td>
<td>32671</td>
<td>1856</td>
<td>34527</td>
<td>5.4</td>
</tr>
<tr>
<td>2008</td>
<td>32795</td>
<td>1712</td>
<td>34507</td>
<td>5.0</td>
</tr>
<tr>
<td>2009</td>
<td>31550</td>
<td>2092</td>
<td>33642</td>
<td>6.2</td>
</tr>
<tr>
<td>2010</td>
<td>28763</td>
<td>1540</td>
<td>30303</td>
<td>5.1</td>
</tr>
<tr>
<td>2011</td>
<td>31909</td>
<td>1978</td>
<td>33887</td>
<td>5.8</td>
</tr>
</tbody>
</table>

Source: Crime in India 2011, National Crime Records Bureau, Ministry of Home Affairs, Government of India

* Boys and Girls up to the age of 18 years have been taken as juveniles according to the new definition a Juvenile Justice (Care and Protection of Children) Act 2000 with effect from 2001.
Table 2.5: Juveniles Apprehended under Selected Offences of Indian Penal Code & Special Legislations 2011

<table>
<thead>
<tr>
<th>Crime head</th>
<th>Total boys</th>
<th>Total girls</th>
<th>Total (boys + girls)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Murder</td>
<td>1111</td>
<td>57</td>
<td>1168</td>
</tr>
<tr>
<td>2. Attempt to murder</td>
<td>808</td>
<td>18</td>
<td>826</td>
</tr>
<tr>
<td>3. Culpable homicide not amounting to murder</td>
<td>61</td>
<td>1</td>
<td>62</td>
</tr>
<tr>
<td>4. Rape</td>
<td>1210</td>
<td>21</td>
<td>1231</td>
</tr>
<tr>
<td>5. Kidnapping and abduction</td>
<td>721</td>
<td>102</td>
<td>823</td>
</tr>
<tr>
<td>6. Theft</td>
<td>6378</td>
<td>174</td>
<td>6552</td>
</tr>
<tr>
<td>7. Hurt</td>
<td>4754</td>
<td>262</td>
<td>5016</td>
</tr>
<tr>
<td>8. Dowry deaths (S. 304B, IPC)</td>
<td>70</td>
<td>34</td>
<td>104</td>
</tr>
<tr>
<td>9. Cruelty by husbands and relatives (S. 498A, IPC)</td>
<td>222</td>
<td>148</td>
<td>370</td>
</tr>
<tr>
<td>10. Narcotic Drugs and Psychotropic Substances (NDPS) Act</td>
<td>78</td>
<td>9</td>
<td>87</td>
</tr>
<tr>
<td>11. Gambling Act</td>
<td>370</td>
<td>112</td>
<td>482</td>
</tr>
<tr>
<td>12. Prohibition Act</td>
<td>268</td>
<td>85</td>
<td>353</td>
</tr>
<tr>
<td>13. Immoral Traffic Prevention Act</td>
<td>2</td>
<td>14</td>
<td>16</td>
</tr>
<tr>
<td>14. The Foreigners Act</td>
<td>39</td>
<td>18</td>
<td>57</td>
</tr>
<tr>
<td>15. Dowry Prohibition Act</td>
<td>1</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>16. Prohibition of Child Marriage Act</td>
<td>2</td>
<td>2</td>
<td>4</td>
</tr>
</tbody>
</table>

Source: Crime in India 2011, National Crime Records Bureau, Ministry of Home Affairs, Government of India

A closer look at the 2011 statistics, disaggregated by sex and selected crimes, as shown in Table 2.5 above, indicates the following:

- The most common offence for which girls have been apprehended is hurt - the data does not indicate if this was perpetrated in self-defence when they were attacked;
- The second most common crime is theft - this possibly includes petty thefts by girls living on the streets as well as those in domestic work who have been accused of thefts by their employers;
- In many cases, minor girls have been accused of committing cruelty under S. 498A, offence of dowry death as well as under the Dowry Prohibition Act (148, 34 and 3 girls respectively). By virtue of being related to the husband who is accused of harassing the wife, the minor girl has also been accused of these offences which are intended at protecting women;
- The number of girls accused under S. 498A is disproportionately high in comparison with boys, when compared with other offences in the table;
- A large number of girls have been booked under the Gambling Act;
- A small number of girls have been booked under the Foreigners’ Act. It is possible that these include girls who have been trafficked to India from neighbouring countries and are hence victims;
- Going by the statistics, substance abuse among girls seems to be low as compared to boys, as less numbers have been apprehended under the NDPS Act. However 85 girls have been booked under the Prohibition Act, which relates to consumption, manufacture and sale of alcohol;
- 2 minor girls have been apprehended under the Child Marriage Restraint Act, which is actually intended for arresting and prosecuting adults involved in such marriages, and protecting minor girls.
- Curiously 21 girls have been apprehended for the offence of rape (not abetment to rape) when rape under the Indian Penal Code (IPC) is a crime that is committed by men on women!

Table 2.6 below gives an indication of the state-wise break up of statistics related to juvenile girls in conflict with the law. The statistics indicate as follows:

- Madhya Pradesh has the highest number of girls, followed by Maharashtra and then Gujarat. This implies that in these states, protective measures are either not in place, or if they are, they are not effective in
preventing girls from committing crimes;

- In almost all the states, girls in the age group of 12-16 years apprehended for IPC crimes is less than those in the age group of 17-18; exceptions are Uttar Pradesh and Chhattisgarh;

- In Maharashtra, there is a sharp difference between girls in the age group of 12-16 and 17-18 (91 and 250 respectively). This indicates that girls nearing age of majority are more at risk of being apprehended under IPC crimes and preventive measures for this age group are required to be strengthened.

Table 2.6: Juveniles Apprehended under IPC Crimes by Age Group, Sex and State-wise in 2011

<table>
<thead>
<tr>
<th>State</th>
<th>Boys (12-16 years)</th>
<th>Girls (12-16 years)</th>
<th>Boys (17-18 years)</th>
<th>Girls (17-18 years)</th>
<th>Total boys* (all age groups)</th>
<th>Total girls* (all age groups)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andhra Pradesh</td>
<td>720</td>
<td>22</td>
<td>1552</td>
<td>31</td>
<td>2363</td>
<td>61</td>
</tr>
<tr>
<td>Bihar</td>
<td>163</td>
<td>14</td>
<td>842</td>
<td>46</td>
<td>1005</td>
<td>60</td>
</tr>
<tr>
<td>Chhattisgarh</td>
<td>1204</td>
<td>45</td>
<td>820</td>
<td>26</td>
<td>2106</td>
<td>72</td>
</tr>
<tr>
<td>Gujarat</td>
<td>571</td>
<td>58</td>
<td>1197</td>
<td>92</td>
<td>1812</td>
<td>156</td>
</tr>
<tr>
<td>Jharkhand</td>
<td>76</td>
<td>17</td>
<td>229</td>
<td>41</td>
<td>306</td>
<td>58</td>
</tr>
<tr>
<td>Karnataka</td>
<td>94</td>
<td>11</td>
<td>214</td>
<td>12</td>
<td>327</td>
<td>40</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>1678</td>
<td>170</td>
<td>3252</td>
<td>219</td>
<td>5089</td>
<td>406</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>1621</td>
<td>91</td>
<td>4269</td>
<td>250</td>
<td>6064</td>
<td>353</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>839</td>
<td>36</td>
<td>1486</td>
<td>44</td>
<td>2363</td>
<td>82</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>476</td>
<td>28</td>
<td>575</td>
<td>17</td>
<td>1084</td>
<td>46</td>
</tr>
</tbody>
</table>

*Statistics for boys and girls in the age group of 7-12 years has been excluded from this table. Total numbers include these.

** Only states with higher numbers of girls have been included for this table; the Union Territories had a negligible number, and hence have not been included.

Source: Crime in India 2011, National Crime Records Bureau, Ministry of Home Affairs, Government of India

Juvenile Girls in Need of Care and Protection

Both in international and Indian law, the terms 'juvenile' and 'child' have been used, which are gender-neutral. However, they have specific consequences on adolescent girls, based on the manner in which they are treated within the family, by the community and the state. It is important to understand that juvenile girls 'in need of care and protection' include girls who are

- living on the streets;
- trafficked;
- missing (includes situations where girls have either run away from their homes or been separated from their parents due to extraneous circumstances);
- abused (including physical, emotional, sexual abuse, including of those girls trapped in child marriages);
- Orphaned, abandoned and destitute;
- In conflict with the law;
- Engaging in substance abuse;
- Affected by natural disasters and conflicts (which cause internal displacement);
- Mentally ill / challenged;
- Physically challenged;
- Working;
- HIV / AIDS affected or infected; and
- Abused by child care institutions.

Despite the best efforts taken, no statistics are available on the number of juvenile girls in need of care and protection in India. However, this is likely to be a large number, given a number of factors including low status accorded to girls which leads to their abandonment as infants. A 2007 study by the Ministry of Women and Child Development, Government of India highlights the fact that 53.22% children reported sexual abuse and 50% reported physical
If even half this population comprises of girls, it indicates a large number of girls who are physically and sexually abused, and who are in need of care and protection.

As such, from public discourses on 'missing children', 'missing girls' and their linkage with trafficking, as well as reports regarding neglect / abandonment of girls, we can only conjecture the magnitude of adolescent girls in need of care and protection.

B. ROOT CAUSES OF DISCRIMINATION AND VIOLENCE AGAINST GIRLS

A study of the root causes of discrimination and violence against girls highlights the ideology, structures and systems that provide the foundation for the institutions of family, community, market and the state to function. The summary below is extracted from the work of the UN Special Rapporteur on Violence Against Women (SRVAW), who has addressed the root causes of discrimination and violence against women - much of this is equally applicable to girls.49

Historically Unequal Power Relations: Violence against girls is a manifestation of historically unequal power relations between men and women. Roots of male dominance and female subordination lie in historical power relations within society. Among the historical power relations responsible for violence against girls, are:

- Economic and social factors that exploit the female body and female labour (linking economic disadvantage faced by girls to economic, physical and sexual exploitation; denial of economic power of girls which increases their vulnerability)

- Family - an institution where the historical power relations are played out - where female labour is exploited, male sexual power is violently expressed and where a certain type of socialisation disempowers women and girls.

- Modern technology - resulting in the increase of sweat shops where female labour is exploited, reproductive technology leading to adverse health effects

- Male control over the knowledge systems, discourses and interpretations of historical experiences - including in the fields of science, culture, religion, language. Such discourses often legitimize or trivialize discrimination / violence. Denial of education to girls and women also contributes to a low access to the knowledge systems.

Gender Inequality and Discrimination: The historically unequal power relations has led to gender inequality and discrimination. It is a harsh reality of today that girls face discrimination as compared to boys in all facets of life: girls have less food to eat, suffer from more health problems, have less opportunities to access education, work longer hours at home from a younger age, often paid less for equal or equivalent work done in the market, enjoy less recreation and mobility, make few decisions that affect their lives and face more brutal forms of sexual and gender-based violence than their male counterparts. Boys are valued more even if they contribute less to the family in monetary or other means. Girls are also seen as bearers and carriers of tradition and culture in their bodies, ways of dressing and behaviour - a burden that is not faced by boys. Boys are regarded as the pillars of tomorrow while girls are seen as the economic burden of today.

The international community realized that many forms of violence and discriminatory practices against girls stem from gender inequality. For this purpose, countries at the International Conference on Population and Development in Cairo in 1994 agreed to:

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- Eliminate all forms of discrimination against the girl child and the root causes of son preference, which results in harmful and unethical practices regarding female infanticide and sex selection before birth;

- Increase public awareness of the value of the girl child and at the same time strengthen the self-image, self-esteem and status of the girl child; and

- Improve the welfare of the girl child, especially in regards to health, nutrition and education.

**Poverty:** Economic hardships often leave girls and families with little or no choice but to focus on survival, and less on upholding, girls' rights. Poverty, combined with the devalued status of girls, results in denial of basic rights, opportunities and resources to girls, thereby stripping them of a conducive environment for their holistic growth and development. For example, poor families cannot afford adequate and nutritious food, health facilities or education. Due to the inter-play of patriarchal attitudes and poverty, the limited resources are used to feed, provide health and educational facilities to boys, while girls are relegated to work in the domestic sphere. This is a reason why girls suffer more from chronic hunger and malnutrition than boys.

**Female Sexuality:** Violence is often used as an instrument to control female sexual behaviour. Rape, sexual harassment, trafficking for sex work, acid attacks and honour crimes against adolescent girls are examples of forms of violence inflicted on girls in India, in order to prevent their exercise of agency, and to control their sexual behaviour. The purpose of this control is to maintain 'chastity'. In India, as in many other societies, the concept of honour is linked with female sexuality, and the perceived loss of honour of family / community is used to justify violence / discrimination against girls. In an effort to protect the girls and women of a community from "others", restrictions are placed on the freedom of expression and mobility of girls. Those who assert equality and independence are seen as transgressing social norms and are more vulnerable to forms of violence and discrimination.

**Cultural Ideology:** Often, discrimination and violence against girls is justified by invoking religion, tradition, culture, custom, values and practices. The construction of masculinity gives the man the power to control the lives of women and girls around him, often through violent means, while conversely, the construction of femininity requires girls to be passive and submissive, uncomplaining, tolerant of and silent about the discrimination and violence perpetrated against them. Discriminatory social values give rise to socially constructed forms of violence and discrimination against girls, which are harmful practices - these are accepted and justified as religion, culture or tradition.\(^5\) In the Indian context, these include forced and child marriages, maltreatment of widows, honour crimes, dowry-related violence, sati, son preference resulting in female infanticide or pre-natal sex selection, witch hunting, acid attacks and devdasi system (dedication of young girls to temples). Harmful traditional practices are inter-connected with each other and with other forms of violence and discrimination against girls, and stem from gender inequality in society. They are symptoms of the devalued status of women and girls in society. The SRVAW has observed that the discourse on harmful traditional practices in the 1980s and 1990s has helped identify forms of violence that were hitherto not recognized. However it also contributed to reinforcing traditional cultures in the Global South as inherently harmful to women (and girls) while asserting that forms of violence against women and girls are not culturally condoned in the West. She has emphasized the importance of identifying commonalities and root causes of traditional harmful practices that undermine the rights of women and girls, rather than partitioning and suppressing practices alone - as the latter could be counterproductive.\(^6\)


\(^6\) A/HRC/4/34, para 34
Doctrines of Privacy and Concept of Sanctity of Family: Historically the public/private distinction allowed violence and discrimination against girls and women within the private domestic sphere to be unchecked and unregulated. However, this is changing in recent times. For example, the Indian government has enacted laws prohibiting of child marriages and extending protection from domestic violence - these are interventions into the privacy of the home, aimed at restoring the dignity and rights of girls and women.

War, Conflict & Militarisation: In contexts of war, conflict, communal violence and militarisation, instances of sectarian or communal strife or in anti-state movements, the experiences of women and girls highlight the violence, discrimination, humiliation they face at the hands of the ‘other’ and subsequently by their own communities. Men who face violence and humiliation at the hands of the enemy to emerge as heroes and martyrs. Conversely, women and girls who are targeted for violence and humiliation at the hands of the enemy, are perceived as "objects of shame", outcasts within their homes and communities. This difference in treatment is embedded in patriarchal ideologies pertaining to the family, community and state. Societies that encourage/facilitate individuals to resolve conflicts in a non-violent manner are more likely to resist violence and discrimination against women and girls.

State Apathy, Culpable Inaction, Wrongful Action: It has been said that state inaction is perhaps one of the greatest causes of violence against women and girls. The failure to intervene stems, in part, from a tolerant attitude towards violence and discrimination, due to entrenched patriarchal attitudes among the policy makers and the law enforcement officials. In India, for example, seriousness of the crime of domestic violence is often not acknowledged by police officials, who trivialise it as a ‘private issue’ fit for counselling and reconciliation through the initiatives of the police. The law refuses to recognize marital rape as a crime, premised on the notion of a man’s proprietary rights over his wife’s body. Even when an offence is in the law, but is rarely prosecuted with vigour and due diligence, it contributes to further violence and discrimination against girls. Corporal punishment, honour crimes, sexual assault and molestation against girls are some cases in point.

The analysis of root causes of violence and discrimination against girls, outlined in this section, is particularly relevant for a discharge of state obligations, as the state is mandated to address not only manifestations of violence and discrimination, but their root causes. This is further discussed in Chapter 10 of this book.

C. CHALLENGES TO REALIZATION OF RIGHTS OF ADOLESCENT GIRLS

Adolescent girls face numerous challenges in asserting and realizing their rights. Early marriages, child labour and prostitution are often the only options available for many girls. Some of the challenges faced by adolescent girls are highlighted below in a tabular form:

Table 2.7: Challenges Faced by Adolescent Girls

<table>
<thead>
<tr>
<th>Challenges faced at home include</th>
</tr>
</thead>
<tbody>
<tr>
<td>● Perceived as an economic burden (Son preference)</td>
</tr>
<tr>
<td>● Gendered roles at home (such as caring for the young, aged and the sick)</td>
</tr>
<tr>
<td>● Denial of / low priority to education</td>
</tr>
<tr>
<td>● Gender differentiation in food, nutrition and health leading to chronic malnutrition and ill-health</td>
</tr>
<tr>
<td>● Internalization of gender discrimination</td>
</tr>
<tr>
<td>● Socialized to suffer in silence</td>
</tr>
<tr>
<td>● Early marriage</td>
</tr>
<tr>
<td>● Domestic violence</td>
</tr>
<tr>
<td>● Low awareness of sexual and reproductive health and rights, leading to early pregnancy and other physical and mental health complications</td>
</tr>
<tr>
<td>● Restrictions in mobility and agency, leading to increased vulnerability</td>
</tr>
<tr>
<td>● Low self-esteem</td>
</tr>
<tr>
<td>● Poverty &amp; economic deprivation of families leading to allocation of scarce resources away from girls</td>
</tr>
</tbody>
</table>
The following chapters of the book will examine whether, how and to what extent laws, policies, programmes, schemes and interventions address the challenges faced by adolescent girls, and help them overcome the same in order that they are able to enjoy their human rights to the fullest.

D. INTER-LINKAGES BETWEEN RIGHTS

For the sake of convenience, this book focusses on distinct rights / issues in separate chapters. However, rights and issues pertaining to girls are, in reality, inter-connected with one another. Hence, no issue can be understood, analysed or responded to in isolation of others. For example, the higher educational attainment of a girl leads to lower chances of an early marriage, early pregnancy and an improved health status. Higher levels of education also lower vulnerability to exploitation at the workplace. Higher incidence of violence against girls leads to their lower health status (both of physical and mental health), lower academic performance and low self-esteem. Girls’ vulnerability to violence, abuse and exploitation, whereby they come into the category of girls ‘in need of care and protection’, reduces with increased education and better livelihood options. Poverty eradication increases access of girls to food, nutrition, health, educational facilities and productive work. Due to the inter-linkages, it is imperative for the government and civil society to formulate and implement programmes with a holistic perspective on adolescent girls.

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Chapter 3
Law & Policy Framework

"...it is important to reaffirm a rights perspective as the philosophical foundation of this document. Adolescents in India have some inalienable rights as equal citizens and as future adults who are expected to participate in democratic processes. Access to good quality education, training and information on a range of issues, including health and reproductive rights, is essential to make informed choices free from influence and coercion. Although the Convention on the Rights of the Child (CRC) guarantees children the right to express their views freely in all matters affecting them, even adolescents are frequently denied the opportunity to participate in decision making processes and activities that affect their lives and future. Privacy and confidentiality are essential prerequisites to address adolescent issues especially with regard to reproductive and sexual health, relationships and emotions. Reaffirmation of this perspective is necessary if we are to move away from a welfare orientation to a rights and empowerment approach."

The shift from a welfare-oriented approach to one that places adolescent girls’ human rights in the centrality of the responses is a recent phenomenon within the Indian law and policy framework, as the quote above from the Planning Commission states.

The law and policy framework provides the foundation, based on which programmes, schemes and interventions to protect and promote adolescent girls’ rights are formulated and implemented. It helps identify the direction and priority areas in which interventions are required to be made. This chapter outlines the law and policy framework within India, as well as international standards that apply to and influence laws and policies.

A. THE INDIAN LEGAL FRAMEWORK

The Indian Constitution is a written legal, political and moral document. All our basic rights are written in and guaranteed by the Constitution. The Indian Constitution, being the most important law in India, sets certain standards with regard to women’s rights and children’s rights in general, from which rights of adolescent girls are required to be culled out. The standards and principles set out in the Indian Constitution were subsequently elaborated through other laws. The Preamble to the Constitution refers to securing all citizens social, economic and political justice and equality of status and of opportunity. The Constitution sets out a number of fundamental rights, generally enforceable in the courts. These include equality before the law and equal protection under the law2, and prohibition on discrimination by the State on a number of grounds, including sex3, in spheres including education and public employment.4 In addition, the State can make affirmative action in favour of women and children, including through reservation and special laws.5 Such special laws, schemes and provisions for women and children (which implicitly includes girls) are

\footnote{Report of the Working Group on Adolescents for the Tenth Five Year Plan, Planning Commission, Government of India, at p. 20}

\footnote{Article 14 of the Indian Constitution}

\footnote{Article 15 of the Indian Constitution}

\footnote{Article 16 of the Indian Constitution}

\footnote{Article 15 (3) of the Indian Constitution}
allowed by the Constitution as a way of off-setting several hundreds of years of oppression and discrimination against women and children (including girls). The State is duty-bound to protect the life and personal liberty of all, including adolescent girls.\(^6\)

Some of the other provisions in the Indian Constitution that positively impact the rights of adolescent girls include the abolition of untouchability;\(^7\) the right to free and compulsory education to all children from the age of six to fourteen years;\(^8\) prohibition of traffic in human beings, begging and other similar forms of forced labour;\(^9\) prohibition of employment of children below the age of fourteen years in factories;\(^10\) duty of the state to ensure that the tender age of children is not abused and that citizens are not forced by economic necessity to work that is unsuited to their age;\(^11\) duty of the state to ensure that children are given opportunities and facilities to develop in a healthy manner, and that childhood and youth are protected against exploitation and against moral and material abandonment.\(^12\)

Laws influence almost every sphere of the lives of adolescent girls. Some of these laws are subject-specific, which apply to all groups of people including adolescent girls; others are group-specific (for children or women). Diagram 3A below gives an overview of rights of adolescent girls in law, on a range of issues, such as:

- **Education** (including right to free and compulsory education for ages 6-14, special provisions for girls)
- **Employment** (such as labour laws regulating conditions at work, abolition of bonded labour, prohibition / regulation of child labour, maternity benefits, equal pay for equal work, minimum wages)
- **Health, food, nutrition, water & sanitation** (health laws including on mental health, disability, medical termination of pregnancy, prohibition of sex-selective abortions, food security etc.)

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\(^6\) Article 21 of the Indian Constitution

\(^7\) Art. 17 states: Abolition of Untouchability.- Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law.

\(^8\) Article 21A of the Indian Constitution, brought out by the 86th amendment to the Constitution, in 2002, states: The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

\(^9\) Article 23(1) of the Indian Constitution states: Traffic in human beings, begging and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

\(^10\) Article 24 states: Prohibition of employment of children in factories, etc.- 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.

\(^11\) Article 39e, in the chapter on Directive Principles of State Policy

\(^12\) Article 39f, in the chapter on Directive Principles of State Policy
- **Marriage** (including religion-based matrimonial laws addressing issues of age of marriage, rights during marriage and upon its termination, law prohibiting child marriage)
- **Violence** (criminal laws, law related to juvenile justice, specific laws on SC / ST atrocities, trafficking, witch hunting, child sexual violence etc.)
- **Land, housing, property rights, environment** (such as laws related to right to residence in matrimonial home, rent, tenancy, ownership of land, forest rights)

The relevant laws will be discussed in specific chapters of this book.

**Definition of Child**

The manner in which adolescent girls are viewed by a law (as a child or an adult) impinges on their rights, entitlements and responsibilities under law. The UN Convention on the Rights of the Child defines a child as every human being below 18 years of age unless under the law applicable, majority is attained earlier.¹³ In India, various laws define a child differently, for varied purposes, creating utter confusion, ambiguity and uncertainty. The Indian government is directing its efforts to remove the anomalies and contradictions in the definition of 'child' across all laws. Table 3.1 below shows the minimum legal age defined by national legislation:

| Table 3.1: Minimum Legal Age as Defined by National Legislation in India |
|-----------------------------|-----------------------------|-----------------------------|
| Issue                      | Boys | Girls | Explanation |
| End of compulsory education| 14   | 14    | Article 21A of Constitution; Right of Children to Free and Compulsory Education Act |
| Marriage                   | 21   | 18    | |

| Sexual consent | Not defined | 16 | S. 375 of Indian Penal Code; Protection of Child from Sexual Offences Bill deems any sexual relations with a person below 18 as rape; consent is immaterial; applies for boys and girls; awaits Presidential assent as on 1 October 2012 |
| Admission to employment or work, including hazardous, part-time & full time work | 14 | 14 | The Factories Act and Plantations Labour Act state that a child is one that has not completed fifteen years of age; an adolescent is one who has completed fifteen years of age but has not completed eighteen years of age. According to the Factories Act adolescents are allowed to work in factories as long as they are deemed medically fit but may not for more than four and half hours a day. S. 2(a), (b) and (c) of Factories Act 1948 and Plantations Labour Act 1951 provide the definitions of 'adult', 'adolescent' and 'child' |
B. POLICY FRAMEWORK IN INDIA

There is no government policy for adolescent girls. Due to specific issues and challenges faced by adolescents, the Planning Commission, for the first time, constituted a Working Group on Adolescents for the 10th Five Year Plan 2002-7. The policy framework pertaining to adolescent girls’ rights is a combination of components derived from national Five Year Plans as well as thematic policies.

Focus on the Girl Child and Adolescents in Five Year Plans

The national Five Year Plans outline the development plans and policies of the government, and are a reflection of its concerns and approaches. Successive five year plans have given special attention to issues pertaining to children, starting with the First Five Year Plan which stated that children should receive much greater consideration than is commonly given to them. The Ninth Five Year Plan (1997-2002) specifically mentions adolescents, though as a subgroup of women, children or youth, and not as a separate category. The Ninth Plan specially emphasizes on adolescent girls’ scheme and assessment of health needs of adolescents in the Reproductive and Child Health (RCH) programme.

The expansion of the scheme for adolescent girls has the following rationale, as stated in the official document - "...in preparation for their productive and reproductive roles as confident individuals not only in family building but also in nation building." The Ninth Plan makes an explicit commitment to human development, centred on the basis recognition of human beings as people. While the 1991 Census indicated a worsening female-male ratio of younger age groups in the population, the 2001 Census revealed a further decline in the 0-6 age group, as well as an even lower female to male ratio in the 15-19 years age group. The Tenth Five Year Plan was influenced by this factor.

\[^{14}\text{Planning Commission, Government of India 1998}\]
The Tenth Five Year Plan (2002-2007), while reiterating the objectives of the Ninth Plan, and emphasized the life cycle approach for improving the status of the girl child. It set monitorable goals including:

- Reduction in gender gaps in literacy and wage rates by at least 50% by 2007.
- Reduction of Maternal Mortality Rate (MMR) to 2 per 1000 live births by 2007 and to 1 per 1000 live births by 2012.

The Eleventh Five Year Plan (2007-2012) emphasized on a continuum of care initiated through programmes and policies, adopting a life cycle approach. It envisioned inclusive growth for all children, irrespective of their class, caste, ethnicity, religion and gender, and advocated ending exclusion of and discrimination against women and children. It recognized the different needs of women and children as heterogenous categories, and acknowledged the right of every child to develop and to be nurtured to his/her fullest potential. It aimed at establishing a framework for child protection and for care and protection of children in conflict with the law. Its six specific targets included:

- Ensuring that women and girl children comprise at least 33% of the direct and indirect beneficiaries of all government schemes;
- Reducing anaemia among women and girls by 50% at the end of the Five Year Plan;
- Reducing drop out rates for primary and secondary schooling by 10% for both boys and girls by the end of the Five Year Plan.

Amongst the measures outlined by the Eleventh Plan to end discrimination against the girl child, those relevant to adolescent girls include:

- Form community vigilance groups at the village level under Sarva Shiksha Abhiyan as a means of ensuring that every girl child is enrolled and retained in school;
- Introduction of conditional cash transfers for the girl child with insurance cover, in the backward states and districts.
- Reform in law, focus on prevention, rescue, rehabilitation, awareness generation and sensitization on the issue of trafficking of girls;
- Stringent implementation of Prohibition of Child Marriage Act 2006 to prevent child marriages; and
- Initiate National Programme for Adolescent Girls, recognizing that creches and day care centres are important not only for development of children, but also to retain adolescent girls in schools.

The Working Group on Child Rights for the 12th Five Year Plan (2012-2017) focuses on negating the root causes of exclusion and exploitation of children, and acknowledges the need to make changes in the mind-set and "address long-standing social norms and traditions that violate the rights of children."15 In its specific focus on adolescents, the report emphasizes on vocational training and life skills education, a gender dimension in policy and institutional framework, as well as an extension of RTE Act 2009 to senior secondary level in order to "arrest early marriages of girls, teenage pregnancy and juvenile delinquency" and to expand "the possibilities of adolescents to realize their full learning rights".16

The Working Group on Youth Affairs and Adolescents' Development for formulation of 11th Five Year Plan 2007-12, in its section on development of adolescents, acknowledged the need to invest in all adolescents, irrespective of class, caste, region and sex. However, it

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16 Ibid at p. 81
recommended that the 11th Five Year Plan provide special attention to the following groups: those infected and affected by HIV/AIDS, victims and survivors of crime and violence, those vulnerable to substance abuse, trafficked adolescents, street adolescents, those in urban slums, juvenile delinquents, adolescents from minority groups and other disadvantaged sections, and mentally and physically challenged adolescents. It further emphasized that even among these special groups, adolescent girls are more disadvantaged, deprived and vulnerable, and require special attention. This understanding and acknowledgment of the concerns related to adolescent girls is heartening, and provides hope for a dedicated policy for adolescent girls in future.

**Thematic Policies**

The National Policy for Children 1974 describes children as a supremely important asset, and makes the state responsible to provide basic services to children both before and after birth, during their growing years and at different stages of development. A review of this policy was initiated in 2008, taking into account existing and emerging challenges faced by children, reflected by a paradigm shift from 'needs based' to a 'rights based' approach. The National Charter for Children 2003 includes specific provisions on adolescents, and reflects the recognition by the government of adolescents as a specific group with specific needs. It states:

*The State and community shall take all steps to provide the necessary education and skills to adolescent children so as to equip them to become economically productive citizens. Special programmes will be undertaken to improve the health and nutritional status of the adolescent girl.*

(paragraph 12)


The National Plan of Action for Children 2005 commits itself to ensure all rights to all children up to the age of 18 years. The Plan of Action is divided into four sections: child survival, child development, child protection and child participation. Under child development, specific chapters are assigned to rights of the girl child (chapter 6) and that of adolescents (chapter 7). One of the goals stated in the chapter on adolescents is: "To ensure full opportunities to all adolescent girls and boys in the age group of 13 to 18 years to realize their rights and develop their full potential as human beings." The objectives listed in the chapter include promoting physical, mental, emotional and reproductive health among adolescents, sexuality and sexual responsibility, promotion of education including life skills, self-esteem and decision making, to protect from all forms of social, economic and sexual exploitation, violence and discrimination, and training opportunities to prepare them for sustainable livelihoods. A review of the 2005 Plan of Action was initiated during the Eleventh Five Year Plan.

National Policy on Education, originally formulated in 1968, was revised in 1992, through the Plan of Action on Education. This would need further re-examination and revision in the light of the Right to Education Act, which covers adolescents only up to the age of 14. The National Nutrition Policy 1993 identifies nutrition as a multi-sectoral issue, providing for institutional mechanisms to address the issue of under-nutrition, such as Nutrition Councils at the national, state and district levels. The National Plan of Action on Nutrition 1995 identifies adolescent girls as a vulnerable group and suggests ways to redress nutritional problems of adolescent girls, though the concern for them emerges only in their role as mothers and care givers.

National Population Policy 2000 recognized that adolescents are an under-served category, acknowledges the crucial role played by adolescent girls in population control, and emphasizes on delaying age of marriage as a strategy for population control, through an effective implementation of
The Prohibition of Child Marriage Act. The Draft National Youth Policy 2001, for the first time, draws a distinction between age of adolescence (13-19 years) and age of maturity (20-35 years), which facilitates identifying specific needs for adolescents. The Youth Policy provides a comprehensive view of adolescents and their concerns, and adequately addresses the issue of gender inequality. The National Policy for the Empowerment of Women 2001 does not specifically highlight issues of adolescent girls - not even in aspects of gender discrimination or violence; however, its provisions on the girl child are bound to impact adolescent girls' rights. It is a matter of concern that while the Youth Policy specifically recognizes adolescent needs and concerns, neither the National Policy for Empowerment of Women 2001 nor the National Health Policy of 2002 focusses on adolescent girls at all, subsuming them within the categories of "women" and "girl child". It indicates a lack of coordination among the various Ministries within the government.

The Five Year Strategic Plan 2011-2016, adopted by the Ministry for Women and Child Development, is one of the most recent and influential document contributing to the policy framework for adolescent girls. This Plan recognizes adolescent girls as a "vulnerable group requiring concerted attention". The Plan aims to considerably reduce anaemia among girls, and also aims to empower adolescent girls through nutrition, health care and life skills education.

The major policies that contribute to adolescent girls' rights are given in Table 3.2 below:

<table>
<thead>
<tr>
<th>Time period</th>
<th>Major Policies</th>
</tr>
</thead>
<tbody>
<tr>
<td>1974</td>
<td>First National Policy for Children 1974</td>
</tr>
<tr>
<td>1983</td>
<td>First National Health Policy 1983</td>
</tr>
<tr>
<td>1986</td>
<td>National Educational Policy 1986</td>
</tr>
<tr>
<td>1992</td>
<td>Plan of Action on Education 1992</td>
</tr>
<tr>
<td>1993</td>
<td>National Nutritional Policy 1993</td>
</tr>
<tr>
<td>1993</td>
<td>Apni Beti Apni Daulat 1993</td>
</tr>
<tr>
<td>1995</td>
<td>National Plan of Action on Nutrition</td>
</tr>
<tr>
<td>1997</td>
<td>Kishori Shakti Yojana 1997</td>
</tr>
<tr>
<td>2000</td>
<td>National Population Policy</td>
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<tr>
<td>2001</td>
<td>Draft National Youth Policy</td>
</tr>
<tr>
<td>2001</td>
<td>National Policy for the Empowerment of Women</td>
</tr>
<tr>
<td>2002</td>
<td>National Health Policy</td>
</tr>
<tr>
<td>2003</td>
<td>National Charter for Children</td>
</tr>
<tr>
<td>2005</td>
<td>National Plan of Action for Children</td>
</tr>
<tr>
<td>2007</td>
<td>Establishment of the National Commission for Protection of Child Rights</td>
</tr>
</tbody>
</table>

C. INTERNATIONAL NORMS, STANDARDS & POLICIES

International Conventions

In international conventions, as elsewhere, there has been a historic invisibility of adolescent girls as they were subsumed within the wider notions of 'children' and 'women'. India has ratified a number of international human rights conventions such as the UN Convention on the Rights of the Child (CRC), with its two Optional Protocols, and Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), Convention Against Racial Discrimination (CERD), the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). However, two conventions that have had a profound influence on Indian laws and policies related to adolescent girls are the CRC and CEDAW. Adolescent girls fall within the definition of child under the CRC, as well as entitled to protection under the CEDAW by belonging to the female sex, and thereby being subjected to the same kind of discrimination
that CEDAW speaks in the context of adult women. CEDAW does not stipulate any specific age group; hence its provisions apply to women of all age groups, including adolescent girls.

The Convention on Elimination of Discrimination against Women (CEDAW) was adopted in 1979 and came into force in 1981. CEDAW, considered the Bill of Rights for women, is founded on three core principles that are inter-linked to each other, namely equality, non-discrimination and state obligation. One of the most significant aspects of CEDAW is the model of equality it adopts. CEDAW has made a shift from the formal model (which ignores gender differences and treats men and women alike) and the protectionist model (which recognizes gender differences and reinforces them by sanctioning different treatment, by perceiving women to be weak, subordinate and in need of protection), to the corrective / substantive model of equality (which focuses on corrective and positive measures to eliminate gender discrimination).\textsuperscript{18} The substantive model takes into account and focuses on diversity, difference, disadvantage and discrimination.\textsuperscript{19} It does not merely focus on equal treatment in law; it emphasizes on equality in law (de jure) as well as equality in fact (de facto) / substantive equality. CEDAW places radically different kinds of obligations on states as compared to other conventions, emphasizing not only on creating frameworks for equality on paper, but on the practical realization of rights. For example, the state may have a policy / law of equal access to education for boys and girls. However, given the patriarchal mind set that views education as more important for boys, and the discriminatory practices which are a manifestation of such a mind set, such a law, on its own, might not be adequate to bring about actual changes for girl children at the ground level, unless it is accompanied by incentives for girl children that motivates parents to send girls to schools.\textsuperscript{20} On the other hand, article 2 of CEDAW, a core article of the Convention, establishes that the discrimination to be eliminated is not only that existing in laws and regulations, but also in customs and practices. The CEDAW framework is useful in formulating policies for adolescent girls that would promote substantive equality and ensure that there is a practical realization of their rights at the ground level.

The CRC, which was adopted in 1989 and came into force in 1990, articulates the rights more completely and provides a set of guiding principles that fundamentally shapes the way in which we view and treat children (persons below 18 years of age). It compiles and clarifies a newer understanding of children’s human rights. The CRC highlights the spirit of complementarity and the interdependence of human rights by combining civil and political rights with economic, social and cultural rights. It calls for a holistic approach in analysis. It creates a new vision of the child: On one hand, it protects the child through positive action by the child’s country, parents and relevant institutions. At the same time, it does not view children as passive recipients of rights but as active agents holding participatory rights and freedoms. Its provisions focus on four general principles, which provide guidance to national policies and programs seeking to implement the same: non-discrimination; best interests of the child; right to life, survival and development; and views of the child. The right to participation of children, and the priority placed on views of children in the CRC are particularly relevant while framing policies for adolescent girls, as a check and balance against a paternalistic, over-protective and disintegrated approach.

The provisions of CEDAW and CRC intersect, complement and reinforce each other, as emphasized by the Committee

\textsuperscript{18} For a more elaborate discussion on models of equality, see Restoring Rights to Women (2004), New Delhi: UNIFEM & Partners for Law in Development, at pp. 23-26

\textsuperscript{19} Ibid at p. 25

\textsuperscript{20} For example, the Maharashtra government has exempted school fees for girls in all state-run primary schools.
on CEDAW and Committee on CRC.\textsuperscript{21} Together, they establish the normative framework for adolescent girls.

**Programmatic Documents Formulated through International Conferences**

World conferences have had a great influence in changing the content and direction of policies. For example, the World Conference on Education for All, 1990, focussed on access to education and improved access for girls, as also on learning through adolescence and adulthood. The United Nations Conference on Environment and Development (UNCED) held in Brazil in 1992, emphasized on the creativity, ideals and courage of the youth to achieve sustainable development.\textsuperscript{22} Its Programme of Action devoted an entire chapter to the contribution of youth and participation of youth in decision-making. The World Conference on Human Rights (WCHR) held in Vienna in 1993 reiterated the rights of youth. The Vienna conference, for the first time, asserted that "women's rights are human rights". The International Conference on Population and Development (ICPD) held in Cairo in 1994, has had its influence on reproductive health and population policies in India. It underlined the right of adolescents to information about their sexuality and to make responsible decisions. The ICPD's Programme of Action calls upon governments in collaboration with non-governmental organizations, to "meet the special needs of adolescents and to establish appropriate programmes to meet those needs".\textsuperscript{23}

In the Fourth World Conference on Women held in Beijing in 1995, was the first conference with a specific focus on the girl child. The Beijing Platform for Action listed out nine strategic objectives in relation to the girl child:

- Eliminate of all forms of discrimination against the girl-child.
- Eliminate negative cultural attitudes and practices against girls.
- Promote and protect the rights of the girl-child and increase awareness of her needs and potential.
- Eliminate discrimination against girls in education, skills development and training.
- Eliminate discrimination against girls in health and nutrition.
- Eliminate the economic exploitation of child labour and protect young girls at work.
- Eradicate violence against the girl-child.
- Promote the girl-child's awareness of and participation in social, economic and political life.
- Strengthen the role of the family in improving the status of the girl-child.

The relevance of these objectives have been confirmed in subsequent reviews of the commitments, in 2000 (Beijing + 5), 2005 (Beijing +10) and 2010 (Beijing + 15). Much like the complimentary aspects of CEDAW and CRC, the Beijing Platform for Action - the agenda for women - is complemented by the outcome document of a Special Session on Children in 2002 - 'A World Fit for Children'.\textsuperscript{24} Adolescent girls are covered by both. Both documents integrate the principles of non-discrimination and equality, of participation and inclusion, of elimination of poverty, of satisfaction of basic


\textsuperscript{22} UNCED, 1992, Principle 21

\textsuperscript{23} ICPD - Programme of Action, para 7.47

\textsuperscript{24} Adopted by the UN General Assembly Special Session on Children in 2002
needs and of enjoyment of fundamental rights, of good governance and State responsibility. Both documents express explicit concerns for adolescent girls' human rights on the issues of education, health and violence.

Gender equality and empowerment are also pre-conditions for the success of the Millennium Development Goals (MDGs) - developed through the Millennium Summit 2000, and agreed upon by all 193 member states of the United Nations as well as 23 international organizations. Goal No. 3 explicitly states promoting gender equality and empowering women as a goal. Goal No. 1 (eradicating extreme poverty and hunger), Goal No. 2 (universal primary education), Goal No. 5 (improving maternal health) and Goal No. 6 (combat HIV/AIDS, malaria and other diseases) are also relevant to adolescent girls. The Millennium Declaration recognises the importance of gender equality for the achievement of all of the MDGs and, therefore, emphasizes on eradication of violence against women in the following words: "Men and women have the right to live their lives and raise their children in dignity, free from hunger and from the fear of violence, oppression or injustice." To achieve this, it is necessary to "combat all forms of violence against women and to implement the Convention on the Elimination of All Forms of Discrimination against Women." The MDGs are time bound and quantified targets, and are a part of the global agenda for achieving the most fundamental human rights by 2015. Achieving adolescent girls' rights - both de jure and de facto - is an essential component of this process.

At the regional level, SAARC decade of the girl child 1991-2000 is the first time that a policy framework addressed the issue of girl child in the context of all SAARC countries. Through the SAARC Decade Plan of Action 1991, seven global goals and additionally, SAARC-specific goals were adopted, which included:

- reduction of maternal mortality rate by half
  …with special emphasis on raising the present mean age at marriage at least by two years, and postponing the first pregnancy till the age of 20.
- Universal access to safe drinking water and sanitary means of excreta disposal;
  …with emphasis on reduction of related female workload;
- Improved protection of children in especially difficult circumstances
  …with focused attention to protection of girls from exploitative social environment

Areas of supporting goals to the SAARC Decade Plan of Action for the girl child identified issues including reducing gender-disparity in all the goal-related indicators, raising minimum female age of marriage to atleast 18 years, progressive and accelerated elimination of child labour, access to safe drinking water, reduction in maternal mortality and increase in sanitation.26

D. CONCLUSION

Various inter-linkages exist between international standards, Indian law and the policy framework with regard to adolescent girls. International standards set through conventions and programmes/plans of action have influenced the content of both national laws as well as policies related to adolescent girls. For example, the National Plan of Action for Children 2005 was formulated as a follow up to the World Summit on Children, and makes a clear reference to the UN Convention on the Rights of the Child as the guiding instrument for implementing all rights for all children up to the age of 18 years. India's commitment to the Millennium Development Goals and World Fit for Children is reiterated in official documents including the National Plan of Action

for Children 2005, the Report of the Working Group on Child Rights for the 12th Five Year Plan 2012-17. The Juvenile Justice (Care and Protection of Children) Act 2000 refers to the UN Convention on the Rights of the Child as well as other international standards and rules in its preamble. The Protection of Children from Sexual Offences Act 2012 (awaiting Presidential assent as on 1 October 2012) also refers to state responsibilities set out in the UN Convention on the Rights of the Child in its Preamble. Indian laws, policies as well as international standards evolved through conventions and conferences, together, form the law and policy framework pertaining to adolescent girls in India.

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Chapter 4

Education
As A Tool For Empowerment

I think of it often and imagine the scene clearly. Even if they come to kill me, I will tell them what they are trying to do is wrong, that education is our basic right.

- Malala Yousafzai

Right to education of girls has become an issue for intense public discourse in the international community once again, with the attack on Malala Yousafzai on 9 October 2012. Malala is a symbol of resistance to Taliban's efforts at depriving girls of education. She advocated for education of girls and empowerment of women in Swat valley in Pakistan, at a time when the Taliban had banned education of girls and bombed hundreds of girls' schools. On 15 October 2012, Gordon Brown - the former British Prime Minister, now the United Nations Special Envoy for Global

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1 A 14 year old activist from Pakistan who has promoted girls' education, envisioning a confrontation with the Taliban. Quoted from Peer, Basharat: 'The Girl Who Wanted to Go to School', The New Yorker, 10 October 2012. On 9 October 2012, Yousafzai was shot in the head and neck in an assassination attempt by Taliban gunmen while returning home on a school bus, leading to a condemnation of the attack worldwide.
Education, launched a petition in Malala’s name and in support of what Malala fought for. The petition’s main demand is that there should be no children excluded from school by 2015, with the hope that “girls like Malala everywhere will soon be going to school.” The petition will be handed over to the UN Secretary General, Ban Ki-moon.\(^2\)

Education is a critical input in human resource development. It is one of the most important factors that can contribute to empowerment of adolescent girls and facilitate their overall development. A higher level of education would equip them to make informed choices, assert their rights and resist oppression and exploitation. Increased education also correlates with improvement in various socio-economic indicators, such as low birth rate, increased life expectancy, higher age of marriage, higher age of birth of first child, lower infant mortality rate, better livelihood and gainful employment etc. The impetus to focus on improving literacy, universalizing elementary education and education to adolescent girls is based on a recognition of this fact. This chapter highlights various facets of education, and the law and policy responses of the Indian government towards empowering adolescent girls through education.

A. POLICY FRAMEWORK

The policy framework on the education of adolescent girls is located in government policies related to the girl child, youth, adolescents and education, as well as the national Five Year Plans formulated by the Planning Commission of India.

The task of providing basic education to all, with concrete plans of action, gained greater momentum after the National Policy of Education (NPE) was adopted in 1986 and revised in 1992. The main objective of the NPE was the eradication of illiteracy especially for the 15 to 35 age group and universalization of primary education. While it failed to recognise adolescents as a group in its own right, adolescents were bracketed along with children who are to be provided primary education and also with adults who are participants of adult literacy activity. This led to overlooking the special needs of adolescents, and the girls in particular. A mention of vocational education at the higher secondary level and the non-formal and need-based vocational needs of youth (aged 15-35 years) partially addressed the educational needs of adolescents that are essential for sustaining a livelihood.

The World Declaration on Education for All (EFA) adopted in Jomtien, Thailand in 1990, focussed on basic education in all its facets, and reiterated the fundamental right of every citizen to education. The Declaration covered aspects including Early Childhood Care and Education, Elementary Education, Education for Adolescents, Adult Education, Gender Equality and Quality Improvement. The Framework for Action specifically spells out the following:

*Education programmes for women and girls. These programmes should be designed to eliminate the social and cultural barriers which have discouraged or even excluded women and girls from benefits of regular education programmes, as well as to promote equal opportunities in all aspects of their lives.*\(^3\)

In the Ninth Five Year Plan (1997-2002), which outlined the development plans and policies, concerns and approach of the government, adolescents are mentioned mainly in the sections on women and children, health and youth. Specific mention of adolescents in the Ninth Plan include its commitments to expand the adolescent girls scheme.

\(^{2}\) Brown, Gordon. "It's Upto Us to Deliver for Malala", Huffington Post, 15 October 2012

Nevertheless, as critiqued by the Working Group on Adolescents for the Tenth Five Year Plan (2003-2007), adolescents continued to be a sub-group of women, children or youth, with no move to consider adolescents as a separate category. The expansion of the scheme for adolescent girls is mentioned in terms of the underlying rationale - "... in preparation for their productive and reproductive roles as confident individuals not only in family building but also in nation building."

For the first time, the National Youth Policy 2003 distinguished between the age of adolescence (13-19) and the age of attainment of maturity (20-30 years). By doing so, it facilitated a focus on adolescents in government programmes. The policy has a component on education including non-formal education.

The National Charter for Children 2003, adopted in 2004, reiterates the commitment of the Indian government to the cause of children. The Charter devotes a separate para to the issue of education, where it emphasizes the need to reach universal enrolment, universal retention, universal participation and universal achievement, through a partnership between the state and the community. The Charter has an ambiguous provision that education should be "sensitive to the healthy development of the girl child". In the context of the secondary level, it speaks of access to education for "all", and supportive facilities to "disadvantaged groups". However, there is neither a special mention of adolescent girls' right to education nor the need to address barriers that presently exist in realizing this right.

In order to focus not only on the quantity but the quality of education, Prarambhik Shiksh Kosh (PSK) was established in 2004-5, through with the educational cess of 2% on all major central taxes is received. This provided extra finance for the government to channelize towards education, including that of adolescent girls. The funds in the Kosh is utilised exclusively for Sarva Shiksha Abhiyan and National Programme for Nutritional Support to Primary Education (NP-NSPE) Mid-Day Meals. At the international level, the adoption of the Dakar Framework for Action on Education for All provided a milestone on the issue of education. Apart from an emphasis on the quality of education, one of the focus areas in the Framework was on achieving gender equality in education by 2015.

The National Plan of Action for Children, adopted in 2005, gives a special emphasis on the girl child, and states the rights of the girl child to "equal opportunity for free and compulsory elementary education to all girls." A special section of the Plan of Action, devoted to adolescents, states the following goals:

- To ensure full opportunities to all adolescent girls and boys in the age group of 13 to 18 years to realize their rights and develop their full potential as human beings.
- To provide the adolescents with education and development opportunities so that they can participate in the life and progress of community as productive citizens.

These goals will be achieved through the stated objectives, including

- To develop and structure all educational programmes, including the National Curriculum Framework and State Curriculum Frameworks, to inform adolescents and

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5 Planning Commission, Government of India, 1998
7 Ibid at para 7 (c)
8 Ibid at para 7 (e)
9 Ibid at para 7 (b)
10 National Plan of Action for Children 2005, para 6.1.9
11 Ibid, para 7.1.1
12 Ibid, para 7.1.2
develop life skills and self-esteem and decision-making.\textsuperscript{13}

- To ensure progressive provision of formal education to all adolescents\textsuperscript{14}

- To provide "education and training opportunities to adolescents to prepare them for sustainable livelihoods."\textsuperscript{15}

The goals and objectives on education of adolescents do not mention the specific issue of drop out of adolescent girls from schools and the barriers faced by adolescent girls in realising the right to education.

The sub-group report on the Girl Child in the Eleventh Five Year Plan (2007-12) focusses squarely on needs of adolescent girls.\textsuperscript{16} It recognises the logistical constraints that prevent girls' access to formal education, particularly after the stage of primary education, including distance from school and the lack of girl-friendly facilities at school. The need to provide safe transport for the travel of girls to and from schools was emphasized. The report underlined the importance of relevant provisions in the Conditional Cash Transfer Scheme, by which bicycles were provided, as also alternative schooling systems, residential schooling and hostels for adolescent girls to facilitate their continued education.\textsuperscript{17} It further recommended the need to improve the provision of girls' toilets with proper water and sanitation facilities, female teachers at all levels so that the girls feel a safer environment at school as well as bridge schools to integrate those without a formal education system into the formal system.\textsuperscript{18} The Working Group proposed Conditional Transfer Scheme with a separate cash and non-cash

\textsuperscript{13} Ibid, para 7.2.10

\textsuperscript{14} Ibid, para 7.2.13

\textsuperscript{15} Ibid, para 7.2.14


\textsuperscript{17} Ibid, p. 15

\textsuperscript{18} Ibid

transferring component to induce enrolment of girls in school and subsequently for their retention at different stages - primary, elementary and secondary. The Working Group went one step further and emphasized the importance of engendering the education system and making the entire educational environment sensitive to the special needs of girls.\textsuperscript{19} It also highlighted the need to adopt an empowerment approach in tandem with rights-based approach, for the welfare and development of adolescent girls. The inclusion of life skills, nutrition and health education in the education curriculum was also recommended.

The sub-group on Adolescent Education for the Eleventh Five Year Plan (2007-2012) was set up under the Ministry of Human Resource Development. It reiterated the recommendations of its predecessor - the working group on Adolescent Education for the Tenth Five Year Plan (2002-2006) - particularly on the importance of education of adolescents. The report pointed out that though Sarva Shiksha Abhiyan and the National Literacy Mission are important programmes, their reach is limited in as much as they cannot benefit out of school adolescents. It recommended viewing adolescents' education as a third stream of basic education, simultaneous with elementary education and literacy. Its other recommendations which have contributed to the policy framework include:

- Reiteration of a rights based approach to education (upto the age of 14);

- Gender equity as an overriding concern, and as a standard to be conformed with in all education programmes for adolescents;

- Priority to adolescents from socially and economically disadvantaged groups;

- Role of adolescents as agents of change; and

- Providing older adolescents with education that would

\textsuperscript{19} Ibid, p. 16
facilitate their remunerative work / livelihood.

B. JURISPRUDENCE ON THE RIGHT TO EDUCATION

Primary education was originally a State subject under the Indian Constitution, but was subsequently brought under the Concurrent List in 1976 to enable both, the Centre and State, to undertake measures to achieve universalization of primary education. This had substantive financial and administrative implications, with the central government assuming a higher level of responsibility in maintaining the quality of education, in studying and monitoring the educational needs of various sections of the population, and standard-setting for a uniform cohesive policy on education.

In 1992, the Supreme Court, in Mohini Jain's case, stated that the right to education was a fundamental right and enforceable.\textsuperscript{20} The correctness of this judgment was examined by a larger bench of five judges in Unnikrishnan's case in 1993, where the court declared that the right to education is implicit in and flows from the right to life guaranteed under Article 21 and that 'a child (citizen) has a fundamental right to free education up to the age of fourteen years'.\textsuperscript{21} The State responded to this judgment in 2002 by inserting, through the 86th amendment to the Constitution, Article 21A, which provides for the fundamental right to education for children between the ages of 6 and 14.

The 86th amendment also modified Article 45 of the Constitution, providing for early childhood care and education for all children till they complete six years of age. While this provision does not have a direct bearing on adolescent girls' education, it is interesting that the 86th amendment also modified Article 51A, inserting clause (k) which states that it is the duty of parents / guardians of children to provide opportunities for education to their children / wards between the age of 6 and 14. This amendment provoked criticism from many sections of society, as it was seen as an abdication of state responsibility to provide free and compulsory quality education that is accessible and socially appropriate, and an attempt to shift the onus to poor parents and guardians who may be unable to send children to schools for reasons beyond their control. The provision was also seen as glossing over some of the major reasons for a high drop-out rate of children / adolescents from school - lack of quality, appropriate and accessible education - which indicates state's failure of its responsibility. In addition, the amendment did not take into consideration the fact that the state's failure to provide alternative childcare facilities created a need for elder children (particularly adolescent girls) to look after their younger siblings and stay away from school.

It is obvious that effective implementation of poverty alleviation programmes are essential if parents / guardians must fulfil their responsibility of sending children / adolescents to schools.

Almost seven years subsequent to the 86th amendment in 2002, the Right to Education Act received presidential assent in August 2009, to give effect to the agenda of providing free and compulsory education to all children in the age group 6-14 years.

Right of Children to Free and Compulsory Education (RTE) Act 2009

The important features of this law are as follows:

- It provides free and compulsory education to all children of India in the age group of 6 to 14 years;
- No child can be held back, expelled, or required to pass a board examination until the completion of elementary education;
- If a child above six years of age has not been admitted in any school or though admitted, could not complete his / her elementary education, then, he / she will be

\textsuperscript{20} Mohini Jain v. State of Karnataka (1992) 3 SCC 666
\textsuperscript{21} Unnikrishnan J.P. v. State of Andhra Pradesh (1993) 1 SCC 645
admitted in a class appropriate to his or her age. In such a case, the child has a right to receive special training, and would be entitled to free education until completion of elementary education, even if it extends beyond 14 years of age.

- No child can be denied admission in a school due to lack of age proof. Birth certificate or other document may be used for determining the age of the child.
- A child who completes elementary education shall be awarded a certificate;
- The law provides for 25% reservation for economically disadvantaged communities in admission to Class One in all private schools;
- It mandates improvement in quality of education;
- Where there is inadequate school infrastructure, this has to be improved within three years, failing which the recognition given to the school will be cancelled;
- The expenses of free education will be shared between state and central government.

The RTE has been critiqued for a variety of reasons, including the fact that while the UN Convention on Rights of the Child recognises an individual below the age of 18 as a child, and the Juvenile Justice Act too defines similarly, the RTE narrows the definition for the purpose of right to education to persons between 6 and 14 years.22 If the RTE had adhered to the universally accepted definition of child as a person below 18 years, this would have been more beneficial to all adolescent girls up to the age of 18 years.

C. PROGRAMMES, SCHEMES & FACILITIES

Programmes, schemes and facilities on adolescent girls' education have been launched and are implemented by a variety of ministries at the central government, including

Ministry of Human Resource Development (HRD) - Department of School Education and Literacy, Ministry of Women and Child Development (WCD), Ministry of Health and Family Welfare, Ministry of Tribal Affairs, Ministry of Youth Affairs and Sports, and the Ministry of Labour. For the purposes of the present discussion, the programmes and schemes of the Ministry of HRD and Ministry of WCD are of direct relevance.

Major programmes of the Department of Education are Sarva Shiksha Abhiyan, District Primary Education Programme, National Programme for Education of Girls at Elementary Level, Prarambhik Shiksha Kosh, National Institute of Open Schooling, Jan Shikshan Sansthan, Mahila Samakhya, National Programme of Nutritional Support to Primary Education (Mid-Day Meals), and other schemes which accord priority to areas of concentration of SCs, STs, OBCs and minorities.23

The Sarva Shiksha Abhiyan (SSA), the National Programme for Universalization of Elementary Education for children in the age group 6-14 years, was launched by the Government of India in mission mode in partnership with the States and Union Territories. Apart from providing quality elementary education, the SSA also focuses on providing free textbooks for girls, constructing toilets especially for girls, and setting up Village Education Committees and Mother Teacher Associations to monitor the quality of education. While the SSA has been lauded, from the point of view of adolescent girls' education, it is important to recognise the fact that both the SSA as well as Right to Education Act are applicable only to the age of 6-14 years. Thus it covers girls in early adolescence but does not bring within its fold the education needs of adolescent girls between the ages of 14 and 19. The government has recognized this gap, and during the Eleventh Five Year Plan period, efforts are underway to retain children up to middle school and provide Mid-Day

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22 For a discussion on other critical drawbacks in the law, see Jha, Praveen and Parvati,Pooja (2010). pp. 20-23

Meals till Class VIII. On the other hand, the Mahila Samakhya programme ensures equal access to education for adolescent girls and young women, particularly for those from socially and economically marginalised groups. Implementation mechanism includes village level women's collectives called 'mahilasanghas'; however the programme is not uniformly implemented in all the states of the country.

Rajiv Gandhi Scheme for Empowerment of Adolescent Girls (RGSEAG), also known as SABLA, is a scheme run by the Ministry of Women and Child Development. It was launched in 2011 and has a multi-sectoral approach focussing on adolescent girls. SABLA aims at empowering adolescent girls between 11 and 18 years by improving their nutritional and health status, as well as on upgrading their home skills, life skills and vocational skills. It addresses the empowerment of adolescent girls on three issues: nutrition, life skills education and vocational training. It is implemented through anganwadis by State Departments of Women and Child Development, with collaborations with non-profit organisations.

Kishori Shakti Yojana (Programme on Empowerment of Adolescent Girls), implemented as a part of Integrated Child Development Services (ICDS) also focusses on self-development of girls between the ages of 11 and 18 years, through linkages with education, life skills and by encouraging a delay in age of marriage. This scheme has reportedly met with limited success due to funding constraints, among other reasons.

Kasturba Gandhi Balika Vidyalayas is a comparatively new scheme but one that has the potential to positively impact a very large number of adolescent girls. It focuses on girls in early adolescence (11-13 years of age) belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes and minorities, in difficult areas, through a provision of residential schools. At present, over 1819 residential schools are reportedly functioning under the scheme. This scheme is being coordinated with other existing schemes of Department of Elementary Education and Literacy, such as the Sarva Shiksha Abhiyan, National Programme for Education of Girls at the Elementary Level (discussed below), and Mahila Samakhya. The large number of schools sanctioned and the amount of money invested in the programme by the Indian government hold out a promise that the government would be able to sustain this initiative and facilitate adolescent girls to receive residential education up to the secondary level.

Other programmes and schemes include:
- Programme of Alternative and Innovative Education - by Ministry of Human Resource Development (HRD) - Department of School Education and Literacy - it focuses on out of school girls in the 10-14 age group; implementation mechanisms include residential bridge courses for girls, for a duration of 7-9 months.
- National Programme for Education of Girls at the Elementary Level - by Ministry of HRD - it focuses on out of school adolescent girls for upper primary education. Implementation mechanisms include cluster level model schools in 3164 educationally backward blocks.

D. BARRIERS TO ADOLESCENT GIRLS' ACCESS TO EDUCATION

Several reports have highlighted the reasons why adolescent girls are either never sent to school, or drop out from formal
education. A summary of these reasons are given below:

**Logistical Reasons**
- School is too far away
- Transport to and from school is not available
- No proper school facilities for girls (separate toilets for girls, water and sanitation, female teachers)

**Onset of Puberty**
- Menstruation
- Anxiety of parents and families that the girls will enter into romantic / sexual relationships, tainting family honour
- Resistance to send girls to school after the onset of puberty is exacerbated by logistical reasons stated above

**Patriarchal Mindset / Social Practices**
- The family does not consider education / further education to be necessary
- Early marriage
- Preference for son’s education

**Burden of Chores**
- Required for household work
- Required for taking care of siblings
- Required for work on farm / family business

**Poverty**
- Costs too much
- Required for outside work for payment in cash or kind
- Limited resources, leading to families investing in boys’ education

**Other Reasons**
- Violence and threat of violence / harassment against girls to and from, in and around schools
- Repeated failures
- Not interested in studies

Policies, programmes and schemes discussed above have identified these barriers to adolescent girls’ education, and try to address the barriers in a number of ways, such as provision of more schools, employment of female teachers, providing logistical facilities in school, provision of bicycles to commute to and from school, as well as cash and non-cash incentives to study, through schemes of Conditional Cash Transfer.

**E. FAMILY LIFE EDUCATION**
Findings show that young people are poorly informed on issues related to HIV prevention. Only 28% of young women and 54% of young men in the age group of 15-24 had comprehensive knowledge about HIV/AIDS. This is worrisome in the light of the fact that over 35% of all reported AIDS cases in India occur among young people in the age group of 15-24 years and more than 50% of the new HIV infections occur also among young people. (NACO, 2005). Coupled with this, in a survey among young persons of the age group 15-24, 83% young men and 78% young women perceived family life education to be important. Further, in the same survey, young people (45% boys and 27% girls) voted for teacher as the most appropriate person to educate them on family life matters. As a logical corollary to these findings, the following programmes were

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29 NFHS-3
30 Annual report of NACO, 2005
31 International Institute for Population Sciences (IIPS) and Population Council (2010), pp. 16-18
32 Ibid
introduced within the formal education system in India:

- National Population Education Project
- The Project on Adolescent Reproductive and Sexual Health; and
- The School AIDS Education Programme

All three programmes were financially supported by various UN agencies, and implemented through NCERT. In 2005, the Ministry of HRD, in collaboration with National AIDS Control Organisation (NACO), launched the Adolescents Education Programme (AEP). AEP aims at empowering adolescent students to protect themselves from HIV/AIDS and drug / substance abuse. The AEP, covering all senior and senior secondary schools in both rural and urban areas, has three major areas of thrust:

- Process of growing up (including growth and development during adolescence, psychological developments such as sexual characteristics and sociological developments such as inter-personal relationships with family members, peers and members of the opposite sex);
- HIV / AIDS (includes causes and consequences, methods of transmission, preventive and remedial measures as well as social responsibilities towards those infected with HIV / AIDS);
- Drug / substance abuse (include causes and consequences of drug abuse, preventive and remedial measures, rehabilitation, individual and social responsibilities in contexts of drug abuse).

The AEP is integrated into the curriculum on sexual and reproductive health. It is implemented at the central and state levels by NCERT, Central Board of Secondary Education (CBSE), National Institute of Open Schooling, State Board of Secondary Education etc. While an increasing need has been felt for education of adolescents on sexual and reproductive health, resistance to sex and sexuality education of adolescents in schools do persist. At the official level, based on the recommendations of a report, the aims of AEP were expanded to include:

- Knowledge about adolescence and sexuality;
- Developing and reinforcing life skills to enable adolescents to protect themselves;
- Dispelling myths, clarifying misconceptions.

In the context of adolescent girls, such education would include:

- **Family Welfare:** Family Planning, Reproductive cycle, benefits of marriage and children at right age, safe motherhood, immunization etc.
- **ARSH:** Age specific modules for Adolescent Reproductive and Sexual Health, onset of puberty, menstrual hygiene, planned parenthood, AIDS/HIV/STD, contraception etc.
- **Child care practices:** Healthy child feeding practices, benefits of exclusive breast feeding, handling children, common ailments etc.
- **Home management:** home maintenance, budgeting, saving, running household, gender sensitivity, importance of schooling of children, etc.

## F. LIFE SKILLS EDUCATION

Life Skills Education is distinct from Family Life Education, although there may be overlaps. In the context of adolescent girls, life skills refer to the personal competence, attitudes and skills that enable her to deal effectively with the demands and challenges of everyday life, by adopting a healthy and positive behaviour. From the perspective of the Ministry of Women and Child Development, broad topics to be covered in the development of life skills include:

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- Confidence-building
- Self-awareness and self-esteem
- Decision-making (including career goals)
- Critical thinking
- Communication skills
- Rights and entitlement
- Coping with stress and responding to peer pressure
- Functional literacy
- Personal hygiene
- Fitness, yoga, games and sports
- Awareness of rights in laws (particularly those pertaining to women, such as the law on domestic violence, dowry, child marriage, medical termination of pregnancy etc.)
- Right to vote and participate in democratic processes
- Knowledge about existing public services and learning how to access them (such as visits to post offices, banks, police stations, health and educational institutions)

There are various reports of non-profit / voluntary organisations taking on the role of initiating life skills education to adolescent girls. Such initiatives expand the scope of life skill education and have included topics such as:

- 'Who am I' sessions - on personality development
- Women's leadership
- Martial arts and self-defence
- Cycling
- Misuse of internet and mobile phones
- Dangers of trafficking and early marriages
- Being assertive
- Negotiation skills
- Developing empathy

For example, Sakhi - a voluntary organisation - has been conducting life skills education among adolescent girls in remote panchayats in Kerala. It has been working strategically through anganwadi workers, ICDS supervisors and other personnel of government programmes so that the programmes will be self-sustainable even if the voluntary organisation withdraws. In Andhra Pradesh, adolescent girls in 51 villages of Kadapa district have been organised into 42 balika sanghas set up for the school drop outs. These girls learn about health, nutrition and prevention of HIV/AIDS and how to fight exploitation of women and young girls, particularly through trafficking. They also get vocational training in sewing and garment manufaeture to enable them to get jobs. This is making the adolescent girls more confident and many are taking an active role to prevent exploitation of minors and women. Another experiment which has been successful is the use of adolescent girls and young women as volunteer facilitators in the communities they live in. UNICEF, in partnership with the government of Maharashtra and local non-profit organisations, has initiated 'Deepshikha' (adolescent girls') groups. There are now reportedly more than 2200 such groups in four districts of Maharashtra, reaching out to more than 50,000 adolescent girls.\footnote{IBN Live, 'Teaching Life Skills to Adolescent Girls', http://ibnlive.in.com/news/teaching-life-skills-to-adolescent-girls/153755-60-123.html, accessed 27 July 2012} \footnote{Bishnoi, Karuna (2008). Informed Adolescents Prevent Exploitation, http://www.unicef.org/india/realives_4701.htm, accessed 28 July 2012} \footnote{Gretarsson, Alistair (2011). An Education Programme Empowers Adolescent Girls to Thrive in Rural India, http://www.unicef.org/infobycountry/india_57848.html. For more details, see Action Aid International (2004)}
G. Violence Against Girls in and Around Schools

Violence or the fear of violence is one of the major reasons impeding girls from accessing formal education in schools. (Other obstacles to adolescent girls' education are discussed separately below). While violence against their persons is a human rights violation in itself, such violence further impinges the right to education of adolescent girls. A study carried out in 12 countries in Africa and Asia reveals that violence against girls in and around schools, largely remains under-reported or unreported, as a result of which the scale of the problem has been underestimated. This is indicated by its conspicuous absence in major international policies on education of adolescents: The Millennium Development Goals (MDGs), including Goal 2 (universal primary education) and Goal 3 (gender equality), did not make an explicit mention of violence against girls as a critical structural barrier to education (UN 2000). However, the MDGs cannot be achieved unless these structural barriers are recognised and addressed. Other major education initiatives such as the Global Campaign for Education have also remained silent on the issue.

Violence to girls include various forms of sexual assault, harassment, intimidation, teasing and threats. It is compounded by the HIV/AIDS epidemic, as rape carries the risk of girls acquiring this infection. Studies find that violence affects all girls, irrespective of their caste, class, location, age or race. Violence against girls is caused by patriarchal attitudes that condone such violence and use violence as a tool for asserting male power, and to enforce and perpetuate the status quo. It is an extension of the control of men over women - husbands over wives, brothers over sisters, fathers over daughters etc. Violence against girls therefore stems from a desire to control, among others, their movements, access to resources and information, exercise of sexual and other choices, exclude girls from the public sphere and to impose on them the institutions of marriage and family.

Girls themselves often regard violence in schools as inevitable, and do not feel adequately empowered to complain to authorities and initiate action against the perpetrators. It has been found that in rural areas of India, girls who have to walk long distances to school are at risk of kidnap and trafficking. Both in urban and rural India, many incidents of sexual harassment and intimidation of girls are described and dismissed as 'eve-teasing' - a term that undermines the gravity of degradation and humiliation faced by girls, while at the same time, emphasizing a 'light' or 'fun' aspect of the 'teasing' from a male perspective. Violence against girls manifests its effects in low enrolment of girls in schools, poor performance at school, high dropout rates, teenage pregnancy, early marriage, increasing rates of HIV/AIDS in the 15-24 year old age group and psychological trauma.

A critical strategy for addressing violence against girls in relation to schools, is to forge better links between the education and justice systems. Establishing clear disciplinary systems within schools, integrating gender equality issues in pre-training and on-the-job training of teachers and facilitating a complaint system for girls are some other ways of addressing the issue.

Efforts to Prevent Corporal Punishments

Corporal punishments is a contributory factor to high dropout rates in schools. In recent years, efforts have been taken to prevent corporal punishments in schools. Prevention of corporal punishments in schools are premised upon the fact that children have the right to protection from all forms of violence, abuse and maltreatment, and that corporal

\[37\) For more details, see Action Aid International (2004)

\[38\) Ibid, p. 4

\[39\) Ibid
punishment in any setting is a violation of that right. Physical and other forms of humiliating and abusive treatment are not only a violation of the child's right to protection from violence, but also counter-productive to learning, and impinge upon right to education. The UN Convention on Rights of the Child, which the Indian government has ratified, requires states to take "all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child..." 40

The National Policy on Education, formulated in 1986 and modified in 1992 states that "corporal punishment will be firmly excluded from the educational systems". However not all states/union territories in India have prohibited corporal punishment in schools. The Juvenile Justice (Care and Protection of Children) Act 2000, amended in 2006, provides punishment for cruelty to juveniles or children both in and beyond child care institutions. The Act punishes cruelty by those in authority and applies equally to parents, guardians and teachers. 41 The Right of Children to Free and Compulsory Education (RTE) Act, 2009 prohibits physical punishment and mental harassment to the child. The Act states: 42

(1) No child shall be subjected to physical punishment or mental harassment.

(2) Whoever contravenes the provisions of sub-section (1) shall

be liable to disciplinary action under the service rules applicable to such persons. The enactment of the new legislation is the first step towards the universal prohibition of corporal punishment in schools and other educational institutions.

The National Commission for Protection of Child Rights (NCPCR) has issued detailed guidelines to prevent corporal punishments in schools. 43 In August 2007, the NCPCR wrote to all chief secretaries of states, providing detailed guidelines recommending that there should be no gradations while judging corporal punishment. The Commission noted that "small acts" should not be condoned, but nipped in the bud, as they actually lead to gross violations. Approximately 12 states/union territories responded and initiated measures based on the guidelines. The guidelines it issued in August 2007 include:

1. All children are to be informed through campaigns and publicity drives that they have a right to speak against corporal punishment and bring it to the notice of the authorities. They must be given confidence to make complaints and not accept punishment as a 'normal' activity of the school.

2. Every school, including hostels, JJ Homes, shelter homes and other public institutions meant for children must have a forum where children can express their views. Such institutions could take the help of an NGO for facilitating such an exercise.

3. Further a box where children can drop their complaints, even if anonymous has to be provided for in each school.

40 UN Convention on the Rights of the Child, Article 19
41 Juvenile Justice (Care and Protection) Act S. 23 reads as follows: S. 23 Punishment for cruelty to juvenile or child. Whoever, having the actual charge of, or control over, a juvenile or the child, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.
42 Right of Children to Free and Compulsory Education (RTE) Act 2009, S. 16 & 17
43 NCPCR, set up in March 2007 under the Commission for Protection of Child Rights Act 2005, is mandated to facilitate an incorporation of a rights-based perspective in national policies and programmes, along with nuanced responses at the state, district and block levels. In doing so, it ensures that the child rights perspective is in consonance with that enshrined in the Constitution of India and the UN Convention on the Rights of the Child.
44 Letter of NCPCR Chairperson to Chief Secretary of state governments, No. NCPCR/Edu.1/ 07/39, dated 9 August 2007
4. There has to be a monthly meeting of the PTAs or any other body such as the SEC/VEC to review the complaints and take action.

5. The PTAs are to be encouraged to act immediately on any complaints made by children without postponement of the issue and wait for a more grave injury to be caused. In other words the PTAs need not use their discretion to decide on the grievousness of the complaint.

6. Parents as well as children are to be empowered to speak out against corporal punishment without any fear that it would have adverse effect on children's participation in schools.

7. The education department at all levels—block, district and State are to establish procedures for reviewing the responses to the complaints of children and monitoring the action taken on the same.

All the States were to intimate to the Commission on the action taken regarding above directions within two months.

In May 2009, the NCPCR issued additional guidelines, directing the District Collectors/District Magistrates/Deputy Commissioners to take, inter alia, the following actions:

(i) To get Block-wise meetings conducted for all the school headmasters on corporal punishment and to convey them that serious action would be taken against the school as a whole on any act of violence on children in the State.

(ii) To conduct meetings with the District Education Officers, Block Education Officers as well as the Cluster Resource Centres staff on the importance of protection of children's rights and against corporal punishment in schools and to issue instructions to them that they would be held accountable for any instance of violation of children's right and corporal punishment in school.

(iii) To instruct every school headmaster to hold a general body meeting with all parents of the school as well as school education committees or parent-teacher associations on the NCPCR guidelines and the procedures to be adopted for protecting children and their rights in schools.

While the NCPCR's guidelines do not contain gender-specific directions, they are nevertheless useful standards to address corporal punishments of adolescent girls in schools.

Efforts to Prevent and Punish Ragging in Educational Institutions

Ragging is a damaging form of interaction by seniors with juniors / newcomers in school / college. It includes sadism, insults, being forced to run errands for the senior, humiliation, physical and mental harassment and violence. Ragging is not a gender-specific crime. While some young girls and women are killed / driven to suicide due to the physical / mental violence, ragging has left permanent physical injuries or mental scars on many others. In July 2012, a 17-year old girl's vocal cord was damaged and she lost her voice when she was ragged at her hostel in Vizianagaram in Andhra Pradesh. The senior girls tried to throttle her with a rope. In October 2010, four girls were suspended from a medical college in Jamnagar, Gujarat, for ragging a first year student and forcing her to attend a party that she did not want to. There have been reports of girls fainting during ragging.

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46 Ragging: Girl's Vocal Cord Damaged, The Times of India, 23 July 2012


48 Bhopal Girls Ragged, Lodge Complaint Against Seniors, IBN Live, 5 October 2007
A report from 2007 highlights 42 instances of physical injury, and reports on ten deaths purportedly the result of ragging.\textsuperscript{49} Resistance to ragging has been growing in recent years. In 1997, the Tamil Nadu was the first state to pass a law against ragging.\textsuperscript{50} In a landmark judgment, the Supreme Court has issued a series of interim orders as well as final judgment, including the following:\textsuperscript{51}

- It directed the Ministry of Human Resources Development (MHRD) to appoint a panel to recommend anti-ragging measures. (The MHRD appointed a 7 member panel headed by ex-CBI director Dr. R.K. Raghavan)

- It is mandatory for academic institutions to file official First Information Reports (FIRs) with the police based on any complaint of ragging. This would ensure that there is a formal and objective investigation by a relatively neutral body (the police) as compared to an internal inquiry by the concerned institution.

- It directed that all the higher educational institutions should include information about all the ragging incidents in their brochures/prospectus of admission.

- Action may be taken against negligent educational institutions.

The Raghavan Committee report recommended to the Supreme Court that ragging should be included as a special provision / offence in the Indian Penal Code.

In 2009, after the death of a young student - Aman Kachroo - due to ragging, the University Grants Commission (UGC) passed the UGC Regulation on Curbing the Menace of Ragging in Higher Educational Institutions 2009. These regulations are applicable to all higher educational institutions impacting education beyond 12 years of schooling. These regulations attributes responsibility to every college to curb the menace of ragging, including strict pre-emptive measures such as lodging freshers in a separate hostel, surprise raids especially at nights by the anti-ragging squad and submission of affidavits by all senior students giving an undertaking that they will not indulge in ragging. The regulations recommend the formation of an Anti-Ragging Committee to ensure compliance with the regulations, and an Anti-ragging Squad for maintaining vigil, oversight, patrolling and making surprise raids. They call upon the authorities to lodge an FIR within 24 hours of receiving complaint of ragging, and the institution to continue with its own enquiry and remedial action in a time-bound manner (within 7 days).

While there are multiple guidelines issued by Indian authorities, this has not eradicated ragging, which violates the human rights of young students, including adolescent girls. Voluntary organisations have focussed their attention on creating awareness and generating public opinion against ragging, and at the same time, extending support to victims of the heinous practice.\textsuperscript{52}

\textbf{Prevention / Prohibition of Sexual Harassment}

On 3 September 2012, the Lok Sabha passed the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill 2010. At the time of printing of this book, the Bill is yet to be passed by Rajya Sabha. The Bill reportedly covers students in schools and colleges, and its provisions are therefore relevant to prevent, prohibit and redress sexual harassment of adolescent girls in educational institutions.\textsuperscript{53} While it helps to have a law on sexual harassment, as a way of promoting gender equality, right to life and liberty of adolescent girls in educational institutions,
implementation and enforcement of the law will be key. Whether the new law would contribute to creating a safe environment for adolescent girls in schools and colleges, providing an improved access education, remains to be seen. Legal standards and guidelines with regard to sexual harassment at the workplace are discussed in Chapter 5 of this book, with an understanding that 'workplace' includes educational institutions.

H. Conclusion

Many adolescent girls are unable to enjoy the right to education due to the presence of barriers. Indian policies, programmes and schemes attempt to address such barriers and eliminate disincentives to schooling, and have introduced cash and non-cash incentives for families to send and retain adult girls at schools. Over the decades, Indian policy framework with regard to adolescent girls has adopted a rights-based approach, with a recognition of the need to engender the education system itself. Proper implementation of the Right to Education Act would benefit girls in their early adolescence, up to the age of 14. Violence against girls in and around educational institutions substantially deters their access to formal education. Effective implementation of laws preventing violence, harassment and intimidation of girls is a key to adolescent girls' full enjoyment of the right to education. While facilitating adolescent girls' mobility and access to formal education is imperative, non-formal education - particularly family life education, life skills education and vocational training - are also important for the overall empowerment of adolescent girls in India.

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Chapter 5

Girls At Work

Young men and women today build the foundations for the economies and societies of today and tomorrow. They bring energy, talent and creativity to economies and make important contributions as productive workers, entrepreneurs, consumers, agents of change and as members of civil society. There is no doubt that what young people strive for is the chance of a decent and productive job from which to build a better future. Take away that hope and you are left with a disillusioned youth trapped in a cycle of working poverty or in danger of detaching from the labour market altogether - thus representing a vast waste of economic potential.¹

The above quote provides the rationale for examining and addressing the challenges faced by youth at work. The underlying patriarchal attitudes and practices, situated in the context of increasing capitalism and economic globalization (which is largely exploitative), provide further reasons for examining, understanding and addressing adolescent girls and their right to work, as well as rights in work (conditions of work). This is partially what the present chapter seeks

¹ International Labour Organization, Global Employment Trends for Youth, August 2010, p. 2
to do. Additionally, international standards, national laws, policies, programmes and strategies with regard to adolescent girls' work will also be discussed and critiqued. As mentioned in Chapter 2 of this book, a considerable amount of work contributed by girls is unpaid labour that is not valued in monetary terms, and yet, such work is extremely important for the functioning of any economy. This chapter will, however, focus on the paid work of adolescent girls.

A. GLOBAL YOUTH AND RIGHT TO WORK

The 2010 ILO report on Global Employment Trends for Youth reflects today's global reality of young workers (between the ages of 15 and 24) at work. Based on recent labour market information available, the report explores and highlights the vulnerabilities of youth to unemployment and decent work deficits, showing where progress has or has not been made in absorbing the energy, talent and creativity of young people into the productive potential of the economy. The key findings of the report were:

- The youth labour force participation rate decreased globally from 54.7 to 50.8 per cent between 1998 and 2008. Main reason is the increase in number of young people participating in the education system;
- Young people have a higher likelihood than adults of being among the working poor. An estimated 152 million young workers were living in poor households in 2008;
- In developing economies many more young people than adults engage in family businesses (likely to be an informal enterprise) or farms. The chances for many young people in low-income countries of ever transiting to paid employment in the formal sector are slim;
- Most regions demonstrated encouraging gender trends with decreasing gaps in both male-to-female labour force participation rates;
- During 2007-9 when there was a global economic crisis, young women have more difficulty than young men in finding work, and have been hit harder by unemployment than young men; and
- In developing countries, the global economic crisis contributes to "vulnerable employment" and informal sector employment.

When the last two findings are combined, there is a clear indication that worldwide, adolescent girls and young women get forced into informal sector employment and employment where their rights are not likely to be protected, out of desperation of wanting to find work.

B. INTERNATIONAL HUMAN RIGHTS STANDARDS RELATED TO WORK

Workers' struggles have been essential to the recognition of a range of economic, social and cultural rights, including the right to work. The International Labour Organization (ILO) existed and developed a broad range of labour-related standards, even prior to the United Nations or the drafting of the Universal Declaration of Human Rights. India has ratified a number of international conventions that focus directly or have provisions on women's rights at the workplace. Through ratification, such international standards become applicable to India. Such conventions include:

- ILO Underground Work (Women) Convention, 1935 (No. 45) (ratified on 25/03/1938)

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3 ILO defines workers in vulnerable employment as the sum of own-account workers and contributing family workers. They are less likely to have formal work arrangements, and are therefore more likely to lack decent working conditions, adequate social security and 'voice' through effective representation by trade unions and similar organizations. Vulnerable employment is often characterized by inadequate earnings, low productivity and difficult conditions of work that undermine workers' fundamental rights. For more details, see http://www.ilo.org/global/about-the-ilo/newsroom/features/ WCMS_120470/lang--en/index.htm, accessed 10 October 2012
ILO Underground Work (Women) Convention, 1935 (No. 45) (ratified on 25/03/1938)

ILO Night Work (Women) (Revised) Convention, 1948; and Protocol, 1990 (No. 89) (ratified on 27/02/1950)

ILO Equal Remuneration Convention, 1951 (No. 100) (ratified on 25/09/1958)

ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratified on 03/06/1960)


ILO Benzene Convention, 1971 (No. 136) (ratified on 11/06/1991)

ILO Rural Workers' Organisations Convention, 1975 (No. 141) (ratified on 18/08/1977)

UN Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (ratified on 09/07/93)

UN Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) (accessed to 10/04/1979)

UN Covenant on Civil and Political Rights, 1966 (ICCPR) (accessed to 10/04/1979)

UN Convention on the Political Rights of Women, 1953 (ratified on 01/11/1961)

Standards set by Human Rights Treaties: Article 23 of the Universal Declaration of Human Rights (UDHR) guarantees everyone "the right to work, to free employment, to just and favourable conditions of work and to protection against unemployment." The ICESCR contains specific provisions on the right to work. Article 6 of the ICESCR states that the right to work includes "the right of everyone to the opportunity to gain his living by work." Work as a human rights standard involves earning an adequate standard of living. Further, Article 6(2) states that "the full realization of this right shall include technical and vocational guidance and training programmes." Article 1(2) of ILO Convention No. 122 calls upon each member to ensure that "there is work for all who are available for and seeking work." The right to work thus ensures that nobody is excluded from the economic activities of their family / community / state. The human right to work includes:

- Distribution of work in such a way that allows participation of everyone (the right to participate in economic activities)
- Such work should allow persons to earn their living
- Access to resources, education and training
- The benefits from the economic activity should be enough to have an adequate standard of living
- Right to freely chosen and accepted work, conditional upon the possibility of earning a living through that work

Directives of the European Union: The European Union's directives to its member states on the issue of protecting young people at work is an example of standard-setting on this issue. While such directives are applicable only to member countries of the European Union, these are discussed below to illustrate potential ways in which the Indian government can safeguard the rights of adolescent girls at work. A summary of the directive is as follows:

- **Objective:** To adopt minimum requirements aimed in particular at improving working conditions, guaranteeing workers better health and safety protection.

- **Application:** The directive applies to all young people under the age of 18 who have an employment contract or an employment relationship defined by the law in

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force in a Member State and/or subject to the law in
force in a Member State.

- **Categories / Definitions:**
  - *Young people:* young people under the age of 18;
  - *Children:* young people under the age of 15 or who are
    still in full-time compulsory education in accordance with
    national legislation;
  - *Adolescents:* young people between the ages of 15 and
    18 who are no longer in full-time compulsory education
    in accordance with national legislation.

- **Provides for:** Member States to take the necessary
  measures to prohibit the employment of children and
  shall ensure that the employment of adolescents is
  strictly controlled and protected under the conditions
  provided for in the Directive.

- Provides exceptions to blanket ban on employment of
  children

- Lists the employer's general obligations: Such as
  protection of the health and safety of young people,
  assessment of the risks to young people associated
  with their work, assessment and monitoring of the health
  of young people, information about young people and
  children's legal representatives on the possible risks to
  their health and safety

- Lists types of employment that are prohibited for young
  people-including:
  - Work which is objectively beyond their physical or
    psychological capacity;
  - Work involving harmful exposure to agents which are
    toxic, carcinogenic, cause heritable genetic damage, or
    harm to the unborn child or which in any other way
    chronically affect human health;
  - Work involving harmful exposure to radiation;

- Work involving the risk of accidents which it may be
  assumed cannot be recognized or avoided by young
  persons owing to their insufficient attention to safety or
  lack of experience or training: or

- Work in which there is a risk to health from extreme
cold or heat, or from noise or vibration.

- **Provisions regulating working conditions:** The
  directive contains provisions relating to other working
  conditions such as:
  - Maximum working time of eight hours a day, 40 hours
    a week
  - Prohibits night work - between 10 pm and 6 am or 11
    pm and 7 am
  - Specific provisions on rest periods and annual leave

- **Member states' responsibilities:**
  - To implement the directive in the form of a legislation
    in their respective countries
  - To define necessary measures applicable in the event
    of infringement of the provisions of this Directive
  - To ensure that such measures must be effective and
    proportionate to the offence.

In the Indian context, since adolescent girls at work also
include girls who are pregnant, have recently given birth
or are breast feeding, the European Union directive on this
issue are relevant to examine state responsibility in other
jurisdictions. A summary of the European Council directive
on protection of pregnant women, women who have recently
given birth and women who are breastfeeding is as follows: 5

- **Objective:** To take minimum measures to protect the

Directive within the meaning of Article 16(1) of Directive 89/391/
September 2012
health and safety of pregnant workers, women workers who have recently given birth and women who are breastfeeding, considering them to be a specific risk group.

- **Guidelines on aspects that are dangerous for health and safety of the concerned workers:** In consultation with the Member States and assisted by the Advisory Committee on Safety, Hygiene and Health Protection at Work, the directive calls upon the European Commission to draw up guidelines on the assessment of the chemical, physical and biological agents and industrial processes considered dangerous for the health and safety of the relevant workers, to include physical movements and postures, mental and physical fatigue and other types of physical and mental stress.

- For all activities liable to involve a risk, the employer or the health and safety service must determine the nature, degree and duration of exposure in order to evaluate the risks and decide what measures should be taken. Workers to be notified of the results and of measures involving health and safety at work.

- **Employers’ duties:** Exposure of the workers in question to the above risks to be avoided by provisionally adjusting their working conditions or their working hours. Where such adjustment is not technologically and/or objectively feasible, or cannot reasonably be required on duly substantiated grounds, the employer shall take the necessary measures to move the worker concerned to another job. Where transfer to another activity is not feasible, the workers in question must be granted leave for the whole of the period considered necessary to protect their safety and health.

- Maternity leave to be for an uninterrupted period of at least 14 weeks before and/or after delivery.

- **Other conditions of work:**
  - Pregnant workers have the right to take leave from work without loss of pay to enable them to attend ante-natal examinations if such examinations take place during working hours.
  - Prohibition of dismissal of women for reasons related to their condition, protective measures for unlawful dismissal
  - An adequate allowance for health insurance

- **State responsibilities:**
  - To implement the directive in the form of a legislation in the respective countries
  - To introduce into their national legal systems such measures as are necessary to enable workers who consider themselves wronged by failure to comply with the obligations arising from this Directive to pursue their claims by judicial process or by recourse to other competent authorities.
  - To report to the Commission every five years on the practical implementation of the Directive, indicating the points of view of the two sides of industry.

### C. CONSTITUTION & LABOUR LAWS IN INDIA

The Constitution sets out a number of fundamental rights, generally enforceable in the courts. These include equality before the law and equal protection under the law, prohibition on discrimination by the State on a number of grounds, including sex, in spheres including public employment. In addition, the State can make affirmative action in favour of women, including through reservation and special laws. The State is duty-bound to protect the life and personal liberty of all, including women. The Constitution

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6 Article 14 of the Indian Constitution  
7 Article 15  
8 Article 16  
9 Article 15 (3)  
10 Article 21
also directs the state to provide equal pay for equal work,\(^{11}\) and make provisions for ensuring just and humane conditions of work and maternity relief.\(^{12}\) The Constitution further states, in the fundamental rights chapter, that no child below the age of 14 years shall be employed to work in any factory / mine / other hazardous employment.\(^{13}\) The right to primary education has been included as a fundamental right.\(^{14}\) The Constitution further directs the state to ensure 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 is protected against moral and material abandonment.\(^{15}\)

Labour laws aim at protecting and promoting workers' rights at the work place. Provisions of labour laws have focussed on prohibiting / regulating child labour, particularly in hazardous work, and on improving the safety, health and welfare of women and girls in factories and other places of work, minimum wages, equal pay for equal work, maternity benefits, child care facilities, provisions for adequate rest and leisure, prevention of discrimination and sexual harassment at the work place. Many labour laws are an elaboration of principles and directives stated in the Constitution. For example, the equal pay for equal work clause led to the enactment of The Equal Remuneration Act, 1976. The emphasis on just and humane conditions of work led to provisions in Factories Act & other labour laws, prescribing for separate toilets for women and girls, and provision of crèches, and the prohibition of employment of women in dangerous or arduous jobs and night employment. The direction to the State to provide maternity relief's resulted in the enactment of The Maternity Benefits Act, 1961.

Under the Constitution of India, labour is a subject in the 'Concurrent List'. This means that both the central and state governments are competent to enact legislations pertaining to the same. Labour laws that protect women at the work place (and are implicitly applicable to adolescent girls) include:

- **The Equal Remuneration Act, 1976** - Provides for equal remuneration to men and women workers for same work or similar work, and prohibits discrimination in recruitment and service conditions except where employment of women is prohibited or restricted by the law.

- **Maternity Benefit Act, 1961** - Provides for maternity leave and benefit in order to protect the dignity of motherhood and gender justice.

- **The Factories Act, 1948** - The Act has many provisions protecting women at the workplace, including issues pertaining to occupational safety, provision of sanitation and crèche facilities.\(^{16}\)

- **The Mines Act, 1952** - It prohibits the employment of women underground, and provides for restricted timings of work for women employed above the ground.

- **Payment of Wages Act 1936 & the Minimum Wages Act 1948** - Provide for regular and timely payment of wages; industry wage boards are mandated to fix the wage structure for each industry. No payment below the minimum wages prescribed is allowed.

- **Employees Compensation Act 1923** - Provides for compensation to workers for industrial accidents and occupational diseases leading to disability or death.

- **The Industrial Disputes Act 1947** - The law covers layoffs, compensation for retrenchments, labour-management

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\(^{11}\) Article 39(d)

\(^{12}\) Article 42

\(^{13}\) Article 24

\(^{14}\) The Government of India, through the 86th amendment Act of 2002, inserted Art. 21A to the Indian Constitution, which states that the state "shall provide free and compulsory education to all children of the age of 6 to 14 years as the state may, by law determine."

\(^{15}\) Article 39(f) of the Indian Constitution

\(^{16}\) See ss.19 22(2), 27, 42(1)(b), 48, 66, 79(1) and 114
disputes and unfair labour practices; labour courts and industrial tribunals deal with disputes covered by this law.

- **The Payment of Gratuity Act 1972** - Requires employers to pay a gratuity to workers earning less than a certain limit upon their termination of service.

- **The Employees Provident Fund Act** - Applies to most establishments that employ at least 20 workers. Employers and employees contribute 10-12% of the basic wage and dearness allowance of the employee. From the employer's contribution, a certain amount is diverted to the Pension Fund. Four main types of pension are offered: a monthly pension upon superannuation or disability; a monthly widows' pension for death while in service; a monthly children's pension; and a monthly orphan's pension.

- **The Apprentices Act 1961** - Regulates the programme of training apprentices in the industry so as to conform to the syllabi, period of training etc. as laid down by the Central Apprenticeship Council.

- **Child Labour (Prohibition and Regulation) Act 1986** - Prohibits child labour in hazardous occupations and regulates conditions of work in the non-hazardous ones.


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\(^{17}\) For an elaboration of labour laws in general and those pertaining to women, please see Bhasin, Lalit (2007) and Sharma, Parul (2007)

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D. CHILD LABOUR

Child Labour may be defined to include children prematurely leading adult lives, working with or without wages, under conditions damaging to their physical, social, emotional and spiritual development, denying them their basic rights to education, health and development. This includes children working in any sector, occupation or process, including the formal and non-formal, organised and unorganised, within or outside the family.\(^{18}\) The organisation Free the Children defines child labour as a work done by children below the age of 14 "...which restricts or damages their physical, emotional, intellectual, social or spiritual growth as children."\(^{19}\) UNICEF describes child labour as "one of the clearest and worst manifestations of how poverty has a child's face."\(^{20}\)

It is important to remember that protective laws are able to regulate the conditions of work in the unorganised and informal sector to a lesser extent than in the organised sector. The government ought to address the causes of child labour, instead of its manifestations. The causes of child labour include poverty, lack of education and exposure, poor access to education, suppression of workers' rights, and partial prohibition of child labour and inadequate enforcement of child labour laws. Employment of girl children is intricately linked to class and caste hierarchy, social attitude towards education of girls as well as gender discrimination. Education of girls is considered a waste while education of boys is considered an investment. Rural poor illiterate parents abandon girl children, who end up with a life in a brothel or street prostitution; some of them escape to streets and beg, collect scrap and finally end up as prostitutes. Sexual abuse of girl children and adolescent girls employed in domestic work is rampant.


\(^{19}\) [http://www.freethuchildren.org/youthaction/child_labour_the_situation.htm](http://www.freethuchildren.org/youthaction/child_labour_the_situation.htm), accessed 6 September 2012

\(^{20}\) UNICEF (2001), p. 10
Adolescent girls are also considered one of the most vulnerable groups for exploitation at work, due to the process of socialisation. They are conditioned to be more docile, timid, compliant, loyal and responsible. They are seen to have less addictions or vices, and more hardworking and obedient than boys. Significant characteristics of the girl child labourer include:

- Invisible work which is not recognized as an economic activity and which is not under the purview of law;
- No identifiable employer;
- Home-based work;
- Long working hours;
- Poor conditions that prevent them from attending school;
- No skill formation;
- Low pay and low status;
- Physical abuse and sexual harassment.\textsuperscript{21}

This places an onus on the law and policy makers and to formulate relevant laws and policies to address possible exploitation, and for their proper implementation.

**D1: Policy Framework**

The National Policy on Child Labour, August 1987 spelled out an action plan for tackling the problem of child labour. It envisaged a legislative action plan; focussed on and convergence of general development programmes for benefiting children wherever possible; and project-based action plan of action for launching of projects for the welfare of working children in areas of high concentration of child labour.\textsuperscript{22}

In pursuance of National Child Labour Policy, the National Child Labour Project (NCLP) Scheme was started in 1988 to rehabilitate child labour. The Scheme sought to adopt a sequential approach with focus on rehabilitation of children working in hazardous occupations & processes in the first instance. Under the Scheme, after a survey of child labour engaged in hazardous occupations & processes has been conducted, children are to be withdrawn from these occupations & processes and then put into special schools in order to enable them to be mainstreamed into formal schooling system. The Scheme envisages running of special schools for child labour withdrawn from work. In the special schools, these children are provided formal/non-formal education along with vocational training, a stipend of Rs.100 per month, supplementary nutrition and regular health check-ups so as to prepare them to join regular mainstream schools. Under the Scheme, funds are given to the District Collectors for running special schools for child labour. Most of these schools are run by the NGOs in the district. According to the Ministry of Labour and Employment, Government of India, the coverage of the NCLP Scheme has increased from 12 districts in 1988 to 100 districts in the 9th Plan (1997-2002) to 250 districts during the 10th Plan (2003 - 2007).\textsuperscript{23}

In 2001, an evaluation of the Scheme was carried out by independent agencies in coordination with V.V.Giri National Labour Institute. Based on the recommendations of the evaluation and experience of implementing the scheme since 1988, the strategy for implementing the scheme during the 10th Plan was devised. The 10th Plan aimed at greater convergence with the other developmental schemes and bringing qualitative changes in the Scheme. Sallent points of the strategy as envisaged by the 10th Plan include:

- Focused and reinforced action to eliminate child labour in the hazardous occupations by the end of the Plan period;
- Expansion of National Child Labour Projects to additional 150 districts;

\textsuperscript{21} Bajpai, Asha (2003), p. 156
\textsuperscript{22} http://labour.nic.in/cwl/ChildLabour.htm, accessed 1 September 2012
\textsuperscript{23} http://labour.nic.in/cwl/ChildLabour.htm, accessed 10 September 2012
• Linking the child labour elimination efforts with the Scheme of Sarva Shiksha Abhiyan of Ministry of Human Resource Development to ensure that children in the age group of 5-8 years get directly admitted to regular schools and that the older working children are mainstreamed to the formal education system through special schools functioning under the NCLP Scheme; and
• Convergence with other Schemes of the Departments of Education, Rural Development, Health and Women and Child Development for the ultimate attainment of the objective in a time bound manner.\textsuperscript{24}

The strategy outlined for the 11th Five Year plan (2007-12) includes expanding the NCLP scheme to ensure universal enrolment of children in the 6-14 age group to cover those in the hard-to-reach segment. It also includes substantial improvements in the quality and standard of education and teacher training. Another Government initiative under the 11th plan is to amend all laws to recognize everyone under the age of 18 as children and to take appropriate measures to protect their rights accordingly.\textsuperscript{25}

D2: Protective Laws

The enactment of the Factories Act and the Child Labour (Prohibition and Regulation) Act 1986 further complement the constitutional provisions on child labour. The Factories Act prohibits employment of children below the age of 14 years in factories, and regulates the working conditions of children between the ages of 15 and 18 years. The latter law prohibits child labour in hazardous occupations and regulates the conditions of work in non-hazardous ones. Employment of children has been prohibited in at least 13 occupations and 51 processes in the country, with more and more hazardous occupations and processes added to the list from time to time. In 2006, the Central Government amended the Child Labour (Prohibition and Regulation) Act, 1986 prohibiting employment of children below 14 years of age even in non-hazardous industry such as restaurants, motels and in domestic work.\textsuperscript{26}

To further strengthen the process of elimination of child labour, the Ministry of Labour has signed a Memorandum of Understanding with the International Labour Organization on the same.

Through a 2008 notification, the government sought to further amend and add to the list of occupations and processes in which child labour is prohibited. These include the food processing and beverage industries, mechanised fishing, timber handling and loading, and warehousing.\textsuperscript{27} In June 2012, the chairperson of National Commission for Protection of Child Rights, Ms. Shanta Sinha, has reportedly said that there is a need to club both hazardous and non-hazardous work as child labour, and a serious need to amend the law on child labour to include every kind of child labour as hazardous to children.\textsuperscript{28} On 28 August 2012, the cabinet approved a new law - Child & Adolescent Labour (Prohibition) Act, proposing a complete ban on employment of children under the age of 14 in all areas of work. While supporting the move, activists also warned that without sufficient political backing, effective implementation, adequate budgets and robust enforcement, the amended law could remain on the statute book without any impact for the estimated 12.6 million under-14s working in the country.\textsuperscript{29}

\textsuperscript{24} Ibid
\textsuperscript{25} The 11th Five Year Plan, Volume II, available at http://planningcommission.nic.in, accessed 8 September 2012
\textsuperscript{26} Notification in the Official Gazette, dated 10 October 2006
\textsuperscript{27} Gazette Notification by the Ministry of Labour and Employment (Child Labour Section), Government of India, dated 25 September 2008
\textsuperscript{29} ‘A Move that could Help Reduce Child Labour’, The Wall Street Journal, 28 August 2012
D3: Law & Policy in Action

The judiciary has been conscious of the strong link between child labour and education of children. An important judicial intervention in the action against child labour in India was the M.C. Mehta case (1996) in which the Supreme Court, directed the Union and state governments to identify all children working in hazardous processes and occupations, to withdraw them from work, and to provide them with quality education. The Court also directed that a Child Labour Rehabilitation-cum-Welfare Fund be set up using contributions from employers who contravene the Child Labour Act. In addition, in 1993, the Supreme Court in Unnikrishnan v. State of Andhra Pradesh stated that each child has the right to free education until he or she completes the age of 14 years. Article 21-A was subsequently inserted into the Constitution to reflect this standard. In Rajangam, Secretary, District Beedi Workers' Union vs. State of Tamil Nadu, the Supreme Court passed strictures to prohibit child labour since the beedi industry was hazardous to the life and health of children.

In 2005, three non-profit organisations working on child rights - the M.V. Foundation, HAQ: Centre for Child Rights and Social Jurist- filed a public interest litigation in the Supreme Court of India challenging the validity of the Child Labour Act in the wake of the constitutional guarantee to right to education for children in the 6-14 age-group. They argue that child labour up to the age of compulsory education is unconstitutional and is a negation of rights under Article 21-A which provides for compulsory education up to the age of 14. The petition questions as to how children can be at work and at school at the same time, and that this means that any attempt to give them access to education will be second-rate, parallel non-formal education. The petition contends that the existing legislations on child labour which were not completely prohibiting it in all occupations and processes, were resulting in negation of all the fundamental and human rights guaranteed to the children under Article 14, 21-A, 23, 24, 39 (e) 39 (f), 41, 45 and 51-A (h), 61-A (j),51-A (k) of the Constitution read with U.N. Convention on the Rights of the Child and ILO Minimum Age Convention, 1973. This case is pending before the Supreme Court. Notably however, under this case the Court has asked the Government to file a status report on the implementation of Sarva Shiksha Abhiyan - a government programme providing free and compulsory education to all children.

As on many other issues, there exists a gap between the legal standards and reality. In many Indian industries, girls are unrecognized labourers because they are seen as helpers and not workers. Therefore, girls are therefore not protected by the law. The National Child Labour Project (NCLP) scheme, which provides for Rs. 100 as stipend per month to each child labourer withdrawn from work, has come under criticism from persons, including the chairperson of NCPCR, who observed: "The Rs 100 stipend is on official papers only. I wonder how many kids receive this monthly stipend." Moreover, despite the fact that India has formulated laws and policies to protect adolescent girls in labour, the issue is still caught between legal and policy commitments to children on the one hand, and the fallout of the process of globalisation on the other. The statistics below indicate the level of enforcement of the law on child labour, and highlight the fact that out of the number of violations detected, only a small number of prosecutions are launched, out of which an even smaller number convicted.

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32 AIR 1993 SC 401
to sell at market value any product of the debtor's or his/her family members' labour and the right to move freely throughout India. The system is known by different names in different parts of the country, including begar, sagri / hali and jeetham. The causes of bonded labour include poverty, unemployment/under-employment, inequitable distribution of land and assets, low wages, distress migration and social customs. The system draws heavily upon traditional feudal social relations, the caste system, social hierarchy and discriminatory practices that are prevalent in society. Such systems thrive in agriculture, brick kilns, stone quarries, crushers and mines, power looms and cotton handlooms, as well as in construction and other industries.

People considered 'untouchables', adivasis, women and children are among the main victims of the bonded labour system, as they have a lower social ascription and fewer perceived rights. In addition to other forms of exploitation and abuse, female bonded labourers are vulnerable to wage discrimination, physical abuse and sexual exploitation by the creditor and his family members / relatives. The malnutrition-related death of Katraj Lakshmi - a Chenchu tribal woman from Andhra Pradesh - who worked as a bonded labourer on construction sites in Meghalaya, is a case in point. Hard physical labour at construction sites, combined with denial and discrimination in wages and lack of food, caused L lakshmi's death in 2006.

**E1: The Legal and Policy Response**

The Constitution, in the chapter on fundamental rights, prohibits traffic in human beings and forced labour. The Bonded Labour System (Abolition) Act 1976 was enacted to abolish the bonded labour system, as it is exploitative, violative of human dignity and is contrary to basic human

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**Table 5.1: Enforcement of Child Labour (Prohibition and Regulation) Act 1986**

(based on reports received from the State Governments & CLC)

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of inspections carried out</th>
<th>No. of violations detected</th>
<th>Prosecutions launched</th>
<th>Convictions</th>
<th>Acquittals</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997-88</td>
<td>268150</td>
<td>25809</td>
<td>19486</td>
<td>6073</td>
<td>157</td>
</tr>
<tr>
<td>1998-99</td>
<td>222856</td>
<td>11263</td>
<td>6469</td>
<td>4125</td>
<td>725</td>
</tr>
<tr>
<td>1999-2000</td>
<td>242269</td>
<td>7598</td>
<td>3972</td>
<td>1333</td>
<td>356</td>
</tr>
<tr>
<td>2000-01</td>
<td>189842</td>
<td>10537</td>
<td>2398</td>
<td>1036</td>
<td>343</td>
</tr>
<tr>
<td>2001-02</td>
<td>449042</td>
<td>16604</td>
<td>9201</td>
<td>1799</td>
<td>606</td>
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<td>2002-03</td>
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<td>28850</td>
<td>5660</td>
<td>1717</td>
<td>2229</td>
</tr>
<tr>
<td>2003-04</td>
<td>346212</td>
<td>26411</td>
<td>9221</td>
<td>4013</td>
<td>642</td>
</tr>
<tr>
<td>2004-05</td>
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<td>2353098</td>
<td>143804</td>
<td>59026</td>
<td>21481</td>
<td>5505</td>
</tr>
</tbody>
</table>


Despite the existence of the law, reports from the M V Foundation in Andhra Pradesh reveal that nearly 400,000 children, mostly girls between 7 and 14 years of age, toil for 14-16 hours a day in cotton seed production across the country, and that ninety percent of them are employed in Andhra Pradesh alone.36

**E. BONDED LABOUR**

Bonded labour is a system of forced, or partially forced, labour under which the debtor enters into an oral / written agreement with the creditor. According to this agreement, in consideration of an 'advance' obtained by the debtor or by any of his lineal ascendants and in consideration of the interest on such an advance, the debtor agrees to render, by himself or through any member of his family, labour for the creditor for a specified / unspecified period of time either without wages or for nominal wages. Through this agreement, the debtor is deprived of freedom of employment, freedom

36 HAQ: Centre for Child Rights (2005), p. 168; see also 'Girls Fettered: Bonded Labour on AP Farms', Deccan Herald, 17 May 2003


38 Article 23 of the Indian Constitution
values.\textsuperscript{39} The law unilaterally frees all bonded labourers from debt bondage, with simultaneous liquidation of their debts. The law lays down monitoring, enforcement and implementation modalities, which mainly rest on state governments. A series of progressive judgments of the Supreme Court has attempted to monitor the implementation of the law. Pursuant to a 1997 directive of the Supreme Court, the National Human Rights Commission (NHRC) has been vested with the responsibility of monitoring the implementation of the law and making reports to the Court from time to time.\textsuperscript{40}

E2: Law and Policy in Action

In Bandhua Mukti Morcha vs. Union of India, the Supreme Court dealt with the release of bonded labourers from stone quarries in Haryana.\textsuperscript{41} Despite a formal abolition of the system by law and some positive judgments, it continues to exist in practice. An example of the manner in which the bonded labour system works, in particular relevance to adolescent girls, is the Sumangali scheme in Tamil Nadu.

Forced Labour & Adolescent Girls: A Case Study of the Sumangali scheme in Tamil Nadu\textsuperscript{42}

In February 2006, the State Textile Workers Federation made a representation through the Centre of Indian Trade Unions (CITU), to the Government of Tamil Nadu, alleging that the Textile Mills in Tamilnadu were indulging in an exploitative practice of engaging adolescent girls under a scheme known as Thirumagal Thirumana Thittam (Marriage Scheme for Adolescent Girls) and that the same amounted in fact, to forced labour. In January 2007, a notification was issued by the government of Tamil Nadu, including the employment in textile and spinning mills within Part I of the Schedule to the Minimum Wages Act. Thereafter the Chief Inspector of Factories submitted a report to the state government, confirming that girls above the age of 15 were employed in spinning mills for 3 year apprenticeship, and that after completion, the girls were paid Rs. 30,000 - Rs. 50,000 as a lump sum amount to meet their marriage expenses. The report also contained the total number of mills and girls who were employed - 7810 in Erode, 21599 in Coimbatore and 9052 in Dindigul - a total of 38,461 girls employed in 406 mills. The report further said that there had been some incidents of sexual harassment. The report recommended that since it might be impossible to abolish the system all of a sudden, it would be better to appoint monitoring committees at the district level. Accordingly, the state government appointed district monitoring committees in the three districts mentioned above.\textsuperscript{43} At about the same time, a civil society organization - Society for Community Organization (SOCO) Trust complained to the National Human Rights Commission (NHRC), alleging that thousands of girls in the age group of 15 to 20, were employed as bonded labourers by certain Textile Mills, under some dubious schemes known as Sumangali Marriage Thittam and Thirumagal Thirumana Thittam. Based on directions from the NHRC, the state government began identifying mills where young girls were employed as apprentices, examining their working conditions and advising the measures to be taken for prevention of exploitation of young girls in the guise of apprentices.

The Sumangali scheme, which is a form of forced labour in India, is said to have started in 1989. The word "Sumangali" in Tamil means an unmarried girl becoming a respectable woman by entering into marriage. Thus, the

\textsuperscript{39} The words of the Supreme Court in the Asiad Workers case - People's Union for Democratic Rights vs. Union of India AIR 1982 SC 1473

\textsuperscript{40} Order dated 11 November 1997 in PUCL vs. State of Tamil Nadu and others - AIR 1984 SC 802

\textsuperscript{41} For more details, see India Committee of the Netherlands (ICN) and the Centre for Research on Multinational Corporations (SOMO) (2011); Solidaridad-South and South East Asia (2012)

\textsuperscript{42} G.O.Ms.62, Labour and Employment department, dated 30-3-2007
scheme is also known as "marriage assistance system". Under this scheme, girls' parents, usually poor and from the lower castes, are persuaded by brokers to sign up their daughter(s). The scheme promises a bulk of money after completion of a three-year contract working in the factory. The scheme, prevalent largely in the spinning mills of Coimbatore, Tamil Nadu, supposedly meets the need of poor families and provides stable workforce to factories. The scheme is clearly exploitative in nature, as it provided the girls an approximate daily wage of Rs. 50 a day, nearly three times lesser than the legal minimum wage in Coimbatore in 2008. Once the contract is signed, young girls are under the control of the factory or the broker. It is often reported that the girls lived in captivity for a long period. Some factories are reported to fire the girls or make them resign shortly before they finish the three-year contract so as to avoid paying the marriage assistance fund, ranging from Rs. 30,000 to Rs. 50,000.44

In the words of a civil society organization, under this Sumangali Plan, these girls are housed within the textile factories, under conditions seemingly like a mini jail.45 Agents select girls to work at these factories for a 6 month trial. After this period the best workers are employed as cheap child labour and the rest of girls are returned to the village without any pay. The selected girls are contracted for 18 hours a day to work for 3 years, supplement their families' income and save for their marriage dowry, whilst being subjected to the sexual harassment and exploitation of labour. Their wage is their food and board, they are promised a Rs.36000 lump sum at the end of the 3 years. But many girls are reportedly dismissed just prior to the 3 year period ending up with no payment at all or just given invalid bank cheques by some of the companies. Working conditions for girls are even worse than those of their male counterparts, and many are treated little better than slaves. Many are subjected to sexual harassment which can leave permanent physical and mental scars.

In November 2008, the state government, through a government order, fixed minimum wages of Rs. 110/- per day apart from dearness allowance as detailed in the order, to apprentices engaged in employment in textile mills.46 This order was challenged through many writ petitions in the Madras High Court before a single judge, where they were all dismissed, and the government order upheld.47 On appeal before a division bench of the Madras High Court, the court affirmed the single judge's order.48 In 2009, a public hearing on the issue was organised by the Tamil Nadu State Commission for Women, which recommended cash compensation. In 2010, it was reported that a 17 years old girl escaped from a private mill in Coimbatore, where she had been trapped for five years.49 In July 2012, civil society renewed its demand for monitoring of companies implementing the Sumangali scheme.50 Despite the various interventions of the state government, NHRC, the judiciary and civil society organizations, exploitation in the form of bonded and forced labour of adolescent girls reportedly continues in the Tamil Nadu textile and garment industry at present.51

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46 G.O. (2D) No.61, Labour and Employment (J1) Department of State of Tamil Nadu, dated 7.11.2008
47 Tamil Nadu Spinning Mills vs The State of Tamil Nadu, judgment dated 30 April 2009
48 The Southern India Mills vs The State of Tamil Nadu, judgment dated 11 December 2009
50 'Monitoring of Companies under the Sumangali Scheme Demanded', The Hindu, 18 July 2012
51 B. Aravind Kumar, Exploitation Continues at Garment Hub, The Hindu, 8 March 2012
According to government estimates more than thirty seven thousand adolescent girls are trapped in this system across Tamil Nadu. The Sumangali scheme is a complex issue involving adolescent girls, embedded in and deriving strength from a combination of factors: the Indian context of patriarchy, gender discrimination, low social value for girls, the importance attributed to marriage of girls, the practice of dowry and the perception of girls as a financial burden.

The case study from Tamil Nadu discussed above is a mere example of the phenomenon of employing girls in bonded/forced/exploitative labour. Another study reveals the practice in Andhra Pradesh, where local seed farmers, who cultivate hybrid cottonseed for national and multinational seed companies, secure the labour of young girls by offering loans to their parents in advance of cultivation, compelling the girls to work at terms set by the employer for the entire season, and, in practice, for several years.

Experts say that despite the legal provisions, identification and release of bonded labourers is always challenging, as only a small number are identified, that too with the persistent efforts of non-profit organizations, and that the rehabilitation of migrant labourers is often neglected. Moreover, very few employers got prosecuted and even fewer got convicted. According to the Ministry of Labour's figures, between 2000 and 2002 in all of India, there were only around 1800 bonded labourers being identified and released; and another around 17300 bonded labourers rehabilitated. However, there was no data showing how many child labourers are among those being freed, and how many of them were adolescent girls.

F. SEXUAL HARASSMENT AT WORKPLACE

Sexual harassment at the workplace is an important issue related to the safety and dignity of girls in workplaces. While the issue is discussed here in the chapter on 'Girls at Work', the legal standards and jurisprudence discussed in this section also applies to the rights of girls in educational institutions, referred to in Chapter 4 of this book.

Sexual harassment is an expression of male power over women and girls that sustain patriarchal relations, and is often an extension of violence against women and girls in everyday life, targeting and exploiting their vulnerability at the workplace. It is a manifestation of power relations - women are much more likely to be victims of sexual harassment precisely because they lack power, are in a more vulnerable and insecure position, lack self-confidence, or have been socially conditioned to suffer in silence. The cases of sexual harassment of women and girls at the workplace are increasing alarmingly because of several factors, such as the poor status of women, patriarchy and gender discrimination, increasing number of working women which results in a 'threat' perception among certain men, poor knowledge of human relations, and inadequate provisions of law to deal with the problem effectively. Sexual harassment at the workplace is not only an issue related to empowerment of women and girls and an issue of occupational safety and health, but is also an issue pertaining to human rights, as the right to life ought to include the right to work in an environment that is conducive to human dignity.

Sexual harassment of women at workplace is also a violation of the right to life and personal liberty as mentioned in Article 21 of the Indian Constitution states that no person shall be deprived of his life or personal liberty. Right to livelihood is an integral facet of the right to life, and

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63 'Girls Fettered: Bonded Labour on AP Farms', Deccan Herald, 17 May 2003; see also data.undp.org.in/childrenandpoverty/ref/Davuluri.htm, accessed 1 July 2012

64 Srivastava, Ravi (2005)

65 Human Rights Watch (2003), p. 50

consequently sexual harassment at the workplace is the violation of the right to livelihood, as it deprives the woman and girl of a safe working environment.

F1: The Definition

In common parlance, there is only a thin line distinguishing between casual flirting and sexual harassment. The Supreme Court laid down the definition of sexual harassment as "any unwelcome sexually determined behaviour such as physical contact, a demand or request for sexual favours, sexually-coloured remarks, showing pornography and any other unwelcome physical, verbal or non-verbal conduct of a sexual nature." It includes leering, dirty jokes, sexual remarks about a person’s body, sexual advances either verbal or through gestures or through the use of sexually suggestive or pornographic material, whistling, sexually slanting and obscene remarks or jokes, comments about physical appearance, demands for sexual favours, threats, avoidable physical contact, touching, patting, pinching, physical assaults and molestation of and towards women workers by their male colleagues or anyone who for the time being is in a position to sexually harass the women under their fold.

In Apparel Export Promotion Council v. A.K. Chopra\(^{57}\), the Supreme Court further explained the definition of 'sexual harassment' in Vishaka judgment as follows:

An analysis of the above definition, shows that sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such a conduct by the female employee was capable of being used for effecting the employment of the female employee and unreasonably interfering with her work performance

and had the effect of creating an intimidating or hostile working environment for her.(para 27)

F2: Landmark Judgment of the Supreme Court

The Supreme Court pronounced a landmark judgment on sexual harassment of working women in 1997 in Vishaka and Others vs. State of Rajasthan.\(^{58}\) In this judgment, the court stated that sexual harassment of working women (including girls) as a form of discrimination against women and violation of the constitutional right to equality. The backdrop to this judgment was the gang rape of a sathini, Bhanwari Devi, in 1992, who was employed by the Rajasthan government in its women’s development programme to prevent child marriages. A group of women’s organizations came forward to file a public interest litigation (PIL) in the Supreme Court, asking for directions and guidelines to ensure the constitutional rights of women to work in a violence-free work environment. The landmark judgment was significant in recognizing sexual harassment at the work place as a violation of the constitutional rights of women and outlining guidelines for the prevention, deterrence and redress of sexual harassment.

The judgment also provided guidelines for employers to redress and prevent sexual harassment at workplace, and to provide a discrimination-free working environment for women employees. The judgment said that it was the duty of the employer or other responsible persons in work places to provide women with a safe working atmosphere, to prevent sexual harassment as well as provide mechanisms for resolution of complaints through the establishment of complaints committees.

The court further directed every workplace to constitute a committee for receiving and inquiring into complaints of sexual harassment. As per the directives of the court, every such committee should consist of members of whom at least

\(^{57}\) Apparel Export Promotion Council v. A.K. Chopra (1999) 1 SCC 759

\(^{58}\) Vishaka & others vs. State of Rajasthan AIR 1997 SC 3011: (1977) 6 SCC 341
50% are women, a chairperson who is a woman and an external member from a social work / non-profit organization. It also outlined preventive steps that the employer ought to take, including discussing the issue affirmatively in workers' meetings and employer-employee meetings, prominent display of guidelines to create awareness of the right of women employees, and prominent display of members of the complaints committee and their contact details. The employers are also responsible for formulating an anti-sexual harassment policy, and for constituting a complaints committee to investigate, mediate, counsel and resolve cases of sexual harassment. A separate law on the issue is being drafted. In the absence of any written law, the judgment is legally binding and final on the issue.

F3: The Law and Policy in Action

Though the Supreme Court judgment has shifted the onus on the employers in public and private sectors to ensure women employees' safety at the workplace, formulating an anti-sexual harassment policy and setting up a complaints committee are not priorities for companies. Hence the law is violated rampanty. The Supreme Court directives mandate all offices to constitute a committee to prevent and redress such cases. However, most workplaces do not constitute a committee till an incident of sexual harassment occurs. Unless a criminal case has been filed, the consequences of the enquiry are usually in the form of a reprimand, demotion, suspension, dismissal or being asked to tender an apology.

An important contributory factor to non-implementation of the law is the lack of awareness among women and girls. In a research by Sakshi - a women's organization - it was found that 58% of the women were not aware of the Supreme Court guidelines. Despite the law, many cases go unreported as women are reluctant to lodge complaints of sexual harassment against their colleagues, for fear of being labeled a "loose woman", the accompanying social stigma and protracted litigation in courts of law.

The National Commission for Women (NCW) commissioned a project on "Sexual harassment of women at work place" in various cities. The study reveals that nearly 60% of the working women are not aware of the guidelines given by the Supreme Court of India in Vishakha case. It was further found that even many of the employers are not aware of the Supreme Court guidelines and have not constituted a committee in pursuance of the guidelines. Thereafter, the NCW had prepared the code of conduct at work place in pursuance of the Supreme Court guidelines and circulated the same to all the ministries, educational institutions, public and private sector undertakings and various NGOs for information and implementation.

Despite the Vishaka guidelines, there have been many instances of sexual harassment in various private workplaces such as educational institutions, Bar Associations, Medical Councils and other professional and technical associations, where compliance to the Guidelines do not exist. In this context, in 2004, through a public interest litigation in Medha Kotwal Leelav. Union of India and others60, an implementation of the guidelines issued by the Supreme Court in Vishaka's case was sought.

An application under the Right to Information Act, filed with the Labour Commissioner in Maharashtra in 2007 revealed that no concrete measures had been taken by it despite the Supreme Court's order in the Medha Kotwal case.61 Another application filed under the Right to Information (RTI) with the Maharashtra State Women Commission revealed that 60 complaints of sexual harassment at the workplace were filed in four months between January 1, 2008 and April 30, 2008.62

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59 Sucheta Dalal, 'Bias in the Boardroom', The Sunday Express, May 18, 2003
61 Yedhula,Prakash (2009)
62 Ibid
In 2010, The Protection Against Sexual Harassment of Women Bill was drafted. The bill makes it mandatory for all workplaces, including homes, universities, hospitals, government and non-government offices, factories, other formal and informal work places to constitute an internal committee for redress of complaints. On 3 September 2012, the Bill - The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill 2010 - was passed by Lok Sabha. One of the major provisions of the Bill, which is of serious concern to women's rights activists and advocates, is that which penalizes the complainant if the internal committee or the local committee concludes that the allegation of sexual harassment was maliciously made, or was false. This provision will have a chilling effect on women who are subjected to sexual harassment at the workplace, and deter them from complaining.

G. CONCLUSION: IMPORTANCE OF POLICIES FOR ADOLESCENT GIRLS AT WORK

Lack of implementation of laws, lack of awareness of rights enshrined in the laws coupled with a lack of access to justice for adolescent girls, brings to the fore the importance of pro-active policies for adolescent girls at work as a complementing strategy.

"Kishori Shakti Yojana" - an adolescent girls scheme sponsored by the central and state government of Haryana - is a case in point where adolescent girls are trained and equipped to improve their home-based and vocational skills.

The scheme was commenced with the objective of improving the nutritional and health status of adolescent girls between 11-18 years of age, to train and equip them to improve home-based and vocational skills, to promote awareness of health hygiene, nutrition, home management, child care, and take all measures as to facilitate their marriage after attaining the age of 18 years and even later. This scheme is being implemented through anganwadi centres. Such schemes need to be taken up at a larger, nationwide scale to make a meaningful and long-term impact on economic empowerment of adolescent girls.

In conclusion, instead of viewing adolescent girls only through the lens of their natal families, they should be seen as individuals in their own right, who require laws and policies for protecting and promoting their rights. Micro-credit facilities and facilities for on-site banking facilities for girls and young women at their place of work are some such strategies. The policies should be geared towards supporting adolescent girls for building skills such as life skills and vocational skills, and for having savings independent of their families, in order that they can become economically independent. Laws related to eradication of child labour, bonded labour and protecting girls at the workplace ought to be implemented in a rigorous manner.

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Articles / Fact sheets / Working Papers
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Chapter 6
Right To Health, Food & Nutrition

Adolescent girls' health concerns are priority issues to be addressed, both for their fuller enjoyment of their human rights during adolescence and thereafter, in adulthood. Health of adolescents is also important, as they are a positive force who contribute to the future productivity of the nation. As in all other sectors, gender inequality plays a detrimental role in the health sector too, warranting a closer look at the rights of adolescent girls to health, food and nutrition.

The focus in public discourse has largely been on adolescent reproductive and sexual health, partially motivated by a concern for early marriage, early child birth, consequent adverse impact on the mother's and child's health, as well as its ramifications on population increase. In addition to this important health aspect of adolescent girls, this chapter would discuss other aspects of health, food and nutrition, and highlight law, policy and programmes around the same.

A. WHAT IS THE RIGHT TO HEALTH?¹

The right to health extends beyond access to healthcare

¹ This section has been adapted from Office of the United Nations High Commissioner for Human Rights (OHCHR) and World Health Organisation (2008) Fact Sheet No. 31: Right to Health
and building of hospitals. At the same time, it is more than mere survival or physical existence. Right to health is the right to enjoyment of goods, services, facilities and conditions necessary for its realisation. A wide range of factors contribute to a healthy life. Some major factors are illustrated in the diagram below:

Diagram 6A: Factors that contribute to a healthy life

The right to health contains entitlements, which include

- Equal opportunity to protection of health to achieve the highest attainable standard of health;
- Right to prevention, treatment and control of diseases;
- Access to essential medicines (at affordable prices);
- Maternal, child and adolescent health
- Sexual and reproductive health
- Mental health
- Equal and timely access to health services
- The availability of health-related education, information & counselling
- Participation in health-related decision-making at the national and community levels

The health services / goods / facilities must be

- Provided to all without discrimination; and
- Must be available, accessible, acceptable, affordable and of good quality.

The right to health is to be respected both by the state and its institutions as well as non-state actors, such as private medical institutions, counselling services, laboratories, testing centres and pharmaceutical companies. No government can justify a failure to respect its obligations due to a lack of resources. As in other countries, in India too, right to health and healthcare have been advocated as human rights of the people. The framework of right to health and healthcare in India requires the following elements: availability, non-discrimination, physical accessibility, economic accessibility, information accessibility and quality.

**B. INTERNATIONAL STANDARDS ON RIGHT TO HEALTH OF ADOLESCENTS**

The Preamble of World Health Organisation (1948) and the Universal Declaration of Human Rights asserted the right to health as a fundamental right for all human beings. The right to health was recognised as a human right once again in 1966 in the International Covenant on Economic, Social and Cultural Rights (ICESCR), which emphasises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. It is important to

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2 For a detailed discussion on the human rights approach to healthcare in the Indian context, see Ravi Duggal (2003)
3 For more details see Ravi Duggal (2007) at 12-13
4 In its Preamble, the World Health Organisation (1948) states, The enjoyment of the highest attainable standard of health is one of the fundamental Rights of every human being without distinction of race, religion, political belief, economic or social condition'. In the same year, the Universal Declaration of Human Rights included the right to better living conditions and the right to health and medical service, under Article 27.
5 Art. 12, International Covenant on Economic, Social and Cultural Rights
note that in the ICESCR, mental health (which is often neglected) has been given equal importance as physical health. Other international human rights treaties have also recognised the right to health.\(^6\)

The rights to health of adolescent girls is more particularly situated in the UN Convention on the Rights of the Child (CRC) 1989, as well as the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) 1979. Provisions of the CRC recognize the right to health for all children and identify several steps for its realization.\(^7\) Similarly, CEDAW establishes the obligation to adopt adequate measures to guarantee women access to health and medical care, without any discrimination, including access to family planning services. It also establishes the commitment to guarantee adequate maternal and child health care.\(^8\) The provision on right to health emphasizes the need to eliminate discrimination against women in health care.

**General Recommendations:**

The CEDAW Committee’s general recommendation (GR) on the issue of right to health provides an authoritative and detailed interpretation of the relevant provision, and its analysis of the key elements in Article 12.\(^9\) The GR encourages states parties to address the issue of women’s health throughout the woman’s lifespan. It explicitly states that for the purposes of the present general recommendation, therefore, “women” includes girls and adolescents.\(^10\) In understanding how policies and measures on health care address the health rights of women from the perspective of women’s needs and interests, the CEDAW committee suggests the following factors be considered:\(^11\)

- **Biological factors:** health needs that women face due to biological differences with men - such as menstrual cycle, reproductive function, menopause and higher risk of exposure to sexually transmitted diseases;
- **Socio-economic factors:** these include unequal power relations between men and women in the home and workplace which may adversely affect women’s nutrition and health. Different forms of violence perpetrated against women is another factor. The vulnerability of adolescent girls to sexual abuse by older men and family members, which places them at risk of physical and psychological harm and unwanted and early pregnancy, is specifically highlighted in the GR.
- **Psychosocial factors:** these vary between women and men, and include depression in general and post-partum depression in particular as well as other psychological conditions, such as those that lead to eating disorders such as anorexia and bulimia;
- **Lack of respect for confidentiality:** While lack of respect for the confidentiality of patients will affect both men and women, it may deter women from seeking advice and treatment, particularly for issues pertaining to sexual / reproductive health, which may have a negative impact on their health and well-being.

The GR also states that issues of HIV/AIDS and other sexually transmitted diseases are central to the rights of women and adolescent girls to sexual health. It emphasises

\(^6\) For example, Art. 5 (e) (iv) of International Convention on the Elimination of all Forms of Racial Discrimination 1965; Arts. 28, 43(e) and 45(c) of International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990; Art 25 of Convention on the Rights of Persons with Disabilities 2006
\(^7\) Arts 23 & 24 of The Convention on Rights of the Child recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health, and call upon the state to ensure that no child is denied access to health care services.
\(^8\) Art. 12 (2) of CEDAW
\(^9\) CEDAW Committee’s General Recommendation No. 24 on Women and Health, in twentieth session 1999.
\(^10\) Ibid, para 8
\(^11\) Ibid, para 12
the obligation of countries to ensure, without prejudice or
discrimination, the right to sexual health information, education
and services for all women and girls. It also calls upon the
governments to eliminate barriers to health-care for women
and girls, which include:12

- high fees for health-care services;
- the requirement for preliminary authorization by spouse,
  parent or hospital authorities;
- distance from health facilities; and
- the absence of convenient and affordable public transport.

It also requires all health services to be consistent with the
human rights of women (and girls), including the rights to
autonomy, privacy, confidentiality, informed consent and choice.13

Standards evolved through Conferences -
Declarations, Plans of Action:

International conferences such as the International
Conference on Primary Health Care (resulting in the
Declaration of Alma-Ata), the United Nations Millennium
Declaration and Millennium Development Goals, and the
Declaration of Commitment on HIV/AIDS, have also helped
clarify various aspects of public health relevant to the right
to health and have reaffirmed commitments to its realization.
In addition, standards specific to health rights of women,
adolescent girls and the girl child have evolved, inter alia,
through the following sources: Declaration on Elimination of
Violence Against Women 1993, as well as the Programmes
of Action / Platform for Action adopted at 1993 World
Conference on Human Rights (held in Vienna), the 1994
International Conference on Population and Development
(held in Cairo), the 1995 Fourth World Conference on
Women (held in Beijing), Beijing +5 - Special Session of
the General Assembly in 2000.

C. MAJOR POLICIES, PROGRAMMES &
INTERVENTIONS ON ADOLESCENT GIRLS’
HEALTH

There are no dedicated national policies for adolescent girls’
health. As on other issues, with regard to a policy framework
for health too, adolescent girls have been largely subsumed
in the categories of children or women. Adolescent girls as
a distinct group with specific health and nutrition needs,
extending beyond reproductive health, is beginning to gain
attention and recognition. In this section of the chapter, for
any analysis of the policy framework for adolescent girls’
health, information has been derived from a combination of
these sources:

a) national health, nutrition, population and education policies;
b) national policies / plan of action / charter for children;
c) policies for adolescents / youth;
d) national policies for empowerment of women; and
e) Five Year Plans.

Contents of major national policies that influence programmes
and interventions for adolescent girls’ health are highlighted
in Table 6.1 below. As critiqued by the Planning Commission
of India, policies and programmes have tended to focus
more on education and service delivery on reproductive
health alone. Service delivery necessitated a need-based
approach. The Tenth Five Year Plan made a shift in the
policies, by adopting a rights-based approach, and bringing
to the fore the following aspects of right to health of
adolescents:14

- Right to healthy life, education, nutrition, recreation and
  freedom from violence and abuse;
- Right to information about own body, diseases, their
  transmission, protection and prevention, as well as

12 Ibid, para 21
13 Ibid, para 31(e)
14 Report of Working Group on Adolescents for Tenth Five Year Plan, Planning Commission of India, p. 36, para 7.4
reproduction;
- Right to health care services, including reproductive health counselling.

It highlighted the fact that nutrition, physical and mental health as well as education were inter-linked, and that such inter-linkages had to be recognised in policies and programmes.

In a review of the policy framework on health of adolescents for the Tenth Five Year Plan, undertaken by the Planning Commission of India, the following issues were highlighted:

- Singling out reproductive health to the exclusion of general health, nutrition and physical well-being encourages a fragmented, rather than holistic approach to adolescent health;

- Most policies and programmes for adolescents perpetuate gender stereotypes and adolescent girls are seen mostly as future mothers (and not individuals per se in their own right);[^15]

- The primary health care delivery system with several layers of hospitals does not cater to the health needs of adolescents, including girls;

- No counselling services are available for adolescents;

- The Reproductive and Child Health (RCH) programme provides services to married adolescent girls, but exclude unmarried adolescent girls;

- While adolescent girls show an enormous interest in understanding their own bodies and sexual behaviour, programmes do not cater to / fill in the gap in knowledge. This is important due to growing evidence of ignorance in sexual matters on one hand, and increased sexual activity on the other hand, in the context of the HIV / AIDS pandemic.

[^15]: ibid, p. 34, para 7.2

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**Major Policies Related To Adolescent Girls’ Health**[^16]

**National Policy for Children 1974**

*Relevant contents*

- Comprehensive health programme for all children
- Provisions for physical education, games, sports, recreation in schools & other institutions
- Protection of children against cruelty and exploitation
- The review of the Policy was ongoing in 2011, in order to align it with current and projected needs of all children (individuals below 18 years of age)

*Comments / Critique*

- Covers children from the age of 0-14; subsequently policy revised and coverage extended up to 18 years of age.
- Acknowledges life cycle approach & state responsibility to provide adequate services to children

**National Health Policy 1983**

*Relevant contents*

- Aimed at achieving goal of "Health for All" by year 2000
- Focuses on maternal and child health care and nutrition
- Health, food and nutrition interventions stated in this policy are directed at mothers and pregnant women, and indirectly benefit adolescent girls

*Comments / Critique*

- It failed to declare health and healthcare as fundamental rights of the people
- Does not take into account the specific support needs of adolescent mothers

[^16]: Apart from the author's own analysis of various policies highlighted in the table, the information provided in the table is also compiled from UNFPA (2003); Dasra (2012)
Other aspects of adolescent girls' health are ignored

**National Plan of Action for SAARC Decade of the Girl Child 1991-2000**

*Relevant contents*
- Holistic policy approach for development of the adolescent girl
- Focus on safe motherhood & child bearing
- Strategies to delay marriage
- Crucial role of adolescence stage highlighted

*Comments / Critique*
- Sees adolescent girls mainly in the role of mothers

**National Policy for Education 1986, Plan of Action 1992**

*Relevant contents*
- Recommends population education to address special needs of adolescents related to sexuality and reproductive health

*Comments / Critique*
- Captures both younger and older adolescents

**National Plan of Action (for children) 1992**

*Relevant contents*
- Special focus on adolescent girls - as one of the most critical human resource; their potential needs to be realised
- Recommended improving nutrition, health, education, health and nutrition education, recreation, upgradation of home-based skills and promotion of her decision making capability for adolescent girls. Objectives include:
  - to cover girls in the age group of 11 to 18 years;
  - to improve the nutritional and health status of girls in this age group;
  - to promote awareness of health, hygiene, nutrition and family welfare, home management and child care

*Comments / Critique*
- The Plan of Action was evolved as a follow up to the World Summit for Children
- Health, food and nutrition given adequate attention
- Delaying age at marriage suggested


*Relevant contents*
- Nutrition and health education for adolescent girls & their families - to be integrated into school curricula
- Intensified efforts within ICDS to address nutritional issues of adolescents
- Nutrition surveillance covering adolescents
- Participation of girls in food production and processing

*Comments / Critique*
- Identifies adolescent girls as a vulnerable group & suggests ways to redress nutritional problems of adolescent girls
- Nutritional needs and problems highlighted. However, the concern emerges for them only as mothers and care givers.
- No additional funds allocated for meeting nutritional needs.
- Policy weak in implementation strategies.

**Ninth Five Year Plan (1997-2002)**

*Relevant contents*
- Commitments towards the child to universalise supplementary feeding with a special emphasis on adolescent girls
• To expand the Adolescent Girls' Scheme
• To assess the health needs of adolescents in the Reproductive and Child Health (RCH) programme.

**Comments / Critique**

The expansion of the scheme for adolescent girls is mentioned in terms of the underlying rationale "...in preparation for their productive and reproductive roles as confident individuals not only in family building but also in nation building".

**National Population Policy 2000**

**Relevant contents**

• Recognition that adolescents are an under-served category
• Recommends promoting delayed marriages of adolescent girls - not less than 18 years, preferably 20 years
• Developing health package for adolescents based on their specific requirements

**Comments / Critique**

• Focuses considerably on concerns of adolescents
• Recognises crucial role played by adolescent girls in controlling population
• Emphasis on effective implementation of Child Marriage Restraint Act

**Draft National Youth Policy 2001**

**Relevant contents**

• Promotes an inter-sectoral approach
• Distinction made between age of adolescence (13-19 years) and age of maturity (20-35 years)
• Strategies suggested include integration of health education within educational curriculum, state-sponsored counselling centres for youth to promote mental health

17 Planning Commission, Government of India, 1998

**Comments / Critique**

• Provides a comprehensive view of adolescents and their concerns
• Distinction drawn between age of adolescence and maturity is positive, facilitating identification of specific needs for each group
• Gender inequality has been adequately addressed

**National Policy for the Empowerment of Women 2001**

**Relevant contents**

• Its aims include - provide better access of women to health care & mainstreaming gender concerns
• Recognizes the critical need to have access to safe, effective and affordable methods of family planning of their choice.
• Elimination of discrimination and all forms of violence against women and girls

**Comments / Critique**

• Addresses women's empowerment generally and not in an age-specific manner
• Specific concerns of adolescent girls (physical / psychological / social) not addressed. Adolescents not mentioned specifically either in the section of gender discrimination or violence.
• Most interventions directed at the girl child are bound to have an impact on adolescent girls

**National Health Policy 2002**

**Relevant contents**

• Seeks to set out a new policy framework for accelerated achievement of public health goals
• Persistence of macro and micro nutrient deficiencies among women and children identified
Uneven access to and benefits from the public health system - particularly for women and children; recognition that social, cultural and economic factors continue to inhibit women from gaining adequate access to existing public health facilities

Policy attempts to target school and college students for education on preventive health care

Comments / Critique

No focus on adolescents at all - adolescent girls subsumed in the categories of 'women' and 'children'

Tenth Five Year Plan (2002-2007)

Relevant contents

Specific reference was made to improve coverage and quality of health care to vulnerable and under-served adolescents.

Paradigm shift in making health services decentralized and target free, involvement of NGOs and private sector

Community-based health interventions promoted as a strategy

Advocating a rights based approach

National Charter for Children 2003

Relevant contents

Has a specific provision on empowerment of adolescents

Special programmes to be undertaken to improve the health, food and nutrition status of adolescent girls

National Plan of Action for Children 2005

Relevant contents

In chapter on maternal health, provision of basic maternity services to adolescent expectant mothers specially mentioned

Strengthening National Anaemia Control Programme and screening women and adolescent girls for treatment of anaemia

Ensuring adequate nutrition to girl children of all ages, including adolescent girls

Identifies special needs of girls for safe drinking water, sewage disposal, toilet facilities & sanitation within accessible reach of households

Has a specific section on rights of girl child, which speaks of protection and promotion of rights with age-specific needs

Holistic health care to girl children of all ages including preventive and curative services

Has a specific section on adolescents; one objective - developing health policies and programmes for adolescents for promoting physical and mental health

Comments / Critique

The detailed section on adolescents lists many areas of health, including physical and mental health care - both preventive and curative, as well as an emphasis on health education

Eleventh Five Year Plan (2007-2012)

Relevant contents

Focuses on reproductive and sexual health, and nutrition

One of the monitorable targets of this Plan for 2011-12 is to reduce anaemia among women and girls to half its present level

Five Year Strategic Plan (2011-2016)

Relevant contents

Formulated by the Ministry of Women and Child Development

Aspires for holistic development of women and children of all age groups

It acknowledges the complexity and multi-dimensional causes of maternal and child under-nutrition such as poverty, inadequate food consumption, inequitable food
distribution, improper maternal infant and child feeding and care practices, inequity and gender imbalances and restricted access to quality health, education and social care services.

- One of its aims is to empower adolescent girls (11-18 years) through nutrition, health care and life skill education;
- Aims at reducing anaemia among women and girls

Comments / Critique

- It recognises adolescent girls as a "vulnerable group requiring concerted attention".

Programmes and Interventions

Three main ministries that have integrated the needs and rights of adolescents directly into their programmes are Ministry of Women and Child Development, Ministry of Health and Family Welfare and Ministry of Youth Affairs and Sports.

In addition to direct interventions, programmes such as Public Distribution System (PDS), Targeted Public Distribution System (TPDS), poverty alleviation programmes, rural and urban employment programmes, as well as programmes on water, sanitation and food security have an indirect yet important impact on health, food and nutritional status of adolescent girls. They create the enabling environment for exercise of adolescent girls' right to health.

1. Integrated Child Development Services Scheme (ICDS) (by Ministry of Women and Child Development)

- Launched in 1975, the ICDS was conceptualised as a unique early childhood development programme. It provides supportive assistance to pregnant and lactating mothers. Adolescent girls in this category benefit from the support services.
- It includes immunisation, supplementary nutrition, health and nutrition education, growth monitoring, pre-school education and referral services.

- The Eleventh Five Year Plan and its Mid Term Appraisal along with various consultations have arrived at a consensus on the need to restructure and strengthen ICDS both programmatically and structurally, thereby establishing and ensuring standards of quality, grass roots coverage as well as flexibility in operations.
- In evaluating the effectiveness of the scheme, the Ministry found that the rate of progress in ensuring survival of mother and child, nutrition security and improving health indicators has not kept pace with the efforts.\(^{18}\)
- In the years 2011-2016, the Ministry plans to facilitate the universalization and expansion of the third phase of ICDS, with a focus on issues including promotion of nutrition and health education.\(^{19}\)
- Implementing the ICDS scheme is one of the major functions of the Ministry of Women and Child Development.

2. Kishori Shakti Yojana (Adolescent Girls Empowerment Programme) (by Ministry of Women and Child Development)

- This programme was launched in 1997 and has been implemented as a part of Integrated Child Development Services.
- Its main objective is to improve health, nutrition and self-development of girls who are 11-18 years of age.
- Strategies used include promotion of education, life skills education, encouraging delayed marriage.
- Approximately 44 adolescent girls are benefitted in one year in one KSY block. The total number of KSY blocks in 2008-9 were 6118. Each project is sanctioned Rs. 1.10 lakhs per block per year.\(^{20}\)

\(^{18}\) Ministry of Women and Child Development, Five Year Strategic Plan 2011-2016, Government of India, p. 43

\(^{19}\) Ibid, p. 10, para 5.1

\(^{20}\) Ministry of Women and Child Development (2009), Annual Report 2008-9, New Delhi, pp. 270-271
- This scheme has reportedly met with limited success due to factors including funding constraint, poor demand creation in the community, lack of quality supervision and low capability of anganwadi staff.\footnote{\textit{Ibid}}

3. Rajiv Gandhi Scheme for Empowerment of Adolescent Girls - SABLA (by Ministry of Women and Child Development)
- The programme was launched in 2011 and adopts a multi-sectoral approach.
- SABLA aims to improve the nutritional and health status of adolescent girls and equip them with life skills and provide them with knowledge on family welfare, health and hygiene, information and guidance on existing public services and mainstreaming them into formal schooling.
- For the years 2011-2016, the Ministry will focus on SABLA’s implementation in 200 districts to begin with, followed by evaluation and further expansion across the country.\footnote{\textit{Ministry of Women and Child Development, Five Year Strategic Plan 2011-2016, p. 15, para 7.1}}
- Though initiated by a ministry of the central government, it is implemented by state Departments of Women and Child, through anganwadis.
- The programme proposes recruitment and training of additional workers - Sahelis and Sakhis - who will work from anganwadis, and are mandated to reach out to adolescent girls, create demand for and deliver services to them.
- More aspects of this programme are discussed in Chapter 4 of this book on education of adolescent girls.

4. The Indira Gandhi Matritva Sahyog Yojana (by Ministry of Women and Child Development)
- Aims to improve the health and nutrition status of pregnant, lactating women and infants.

5. Nutrition Programme for Adolescent Girls (launched and implemented by the Ministry of Women and Child Development)
- Aim of the programme is to improve the nutritional status of adolescent girls.
- Under the programme, food grains are provided to undernourished girls identified by the anganwadi worker - 6 kg per month to adolescent girls between 11 and 19 years of age, who are underweight (below 35 kgs).
- This programme was undertaken during 2005-6 on a pilot project basis in 51 identified districts and expanded thereafter.

6. Reproductive and Child Health Programme (by Ministry of Health and Family Welfare)
- Provides for safe motherhood;
- Focusses on prevention and management of unwanted pregnancies;
- Provision of facilities for safe abortion
- Prevention and treatment of reproductive tract infections and sexually transmitted diseases
- Provides for reproductive health services for adolescents
- Provides for education on HIV / AIDS by use of mass media

The RCH programme includes adolescent girls under the targeted categories of pregnant women and mothers,\footnote{\textit{Ibid., p. 15, para 7.2}}
but a critique has been that there are no specific programmes or provision of services specifically for adolescent girls.\textsuperscript{24} Further, there is an unwritten code denying service to unmarried adolescents\textsuperscript{25} due to prejudice, bias and social norms related to sexual and reproductive activities of unmarried adolescents.

7. \textbf{National Rural Health Mission (by the Ministry of Health & Family Welfare)}
- Launched in April 2005, its goal is to provide effective healthcare to rural people with a focus on 18 states which have poor public health indicators and/or weak infrastructure.
- It covers vital determinants of health such as nutrition, sanitation, hygiene and safe drinking water; it proposes a number of new mechanisms for healthcare delivery including training local residents as Accredited Social Health Activists (ASHA).
- Its major goal is to reduce infant and maternal mortality rate, prevention of communicable and non-communicable diseases etc.
- The programme has been instrumental in the decline in the infant mortality rate from 58 in 2005 to 50 in 2009 and increase in the institutional delivery from 10.84 million in 2005-06 to 16.21 million in 2009-10.
- Janani Suraksha Yojana (JSY), launched in 2005, is a safe motherhood intervention under the NRHM. It is being implemented with the aim of reducing maternal and neo-natal mortality by promoting institutional delivery among poor pregnant women and adolescent girls.

8. \textbf{Information, Education and Communication (IEC) on Health (by Ministry of Health and Family Welfare)}
- Covers family welfare, reproductive and population-related issues

\textsuperscript{24} Dasra (2012), p. 13
\textsuperscript{25} Ibid

\textsuperscript{26} UNFPA (2003), p. 113

\begin{itemize}
\item Focusses on inter-personal communication schemes
\item Targets semi-literates and neo-literates in remote areas in vulnerable districts of the country
\item Uses multi-media strategies such as songs, dramas and film screenings
\end{itemize}

9. \textbf{Nehru Yuva Kendras (by Ministry of Youth Affairs and Sports)}
- Undertakes health awareness units
- Focusses on education and family welfare programmes
- Initiates youth awareness drives to address HIV/AIDS and sexually transmitted diseases

10. \textbf{Empowerment through Self-Help Groups}
Empowerment of women has been institutionalised by the government through mahila mandals, mahila swasthya sangh (women's health groups), self-help groups under various names in various states including Swashakti, Swayam Sidha and Nari Shakti. These programmes give importance to aspects of reproductive health and nutritional needs. These programmes and interventions are reportedly benefitting many older adolescent girls.\textsuperscript{26}

11. \textbf{National Food Security Mission (by Ministry of Agriculture)}
Launched in 2007 to meet the food requirements of the country. The main objective of this scheme is to increase production and productivity of wheat, rice and pulses on a sustainable basis.

12. \textbf{Nirmal Bharat Abhiyan / Total Sanitation Campaign (by Ministry of Drinking Water and Sanitation)}
Nirmal Bharat Abhiyan (NBA) is a comprehensive programme to ensure sanitation facilities in rural areas with broader goal to eradicate the practice of open
The key intervention areas are Individual household latrines (IHHL), School Sanitation and Hygiene Education (SSHE), Community Sanitary Complex, Anganwadi toilets supported by Rural Sanitary Marts (RSMs) and Production Centers (PCs).

13. National Rural Drinking Water Programme (by Ministry of Drinking Water and Sanitation)

The Programme ensures supply of adequate water for drinking, cooking and other domestic needs on a sustainable basis in rural areas. The Eleventh Five Year Plan (2007-12) identifies major issues that need tackling during this plan period as the problem of sustainability, water availability and supply, poor water quality, need for decentralized approaches and financing of operational and maintenance cost while ensuring gender and social equity.28

In addition to government-initiated programmes and interventions, non-profit organisations have also successfully worked on issues of adolescent girls’ health, food and nutrition, through community-based interventions that are inter-sectoral and holistic in nature. Some such interventions have been documented.29

The working group on adolescents for the Tenth Five Year Plan recommended the following for future programmes and interventions:30

- Recognise heterogeneity among adolescents who are in school and outside school, as a basis for appropriate strategy development and planning;
- Redesign population education and life skills programmes of the government to reach out to adolescents in-school and out of school;
- Reaffirm the recommendations of the National Health Policy of the Indian government for school health programmes to be integrally linked to general preventive and curative health services, nutrition and reproductive health education and awareness of availability of services;
- Counselling and group education to respond to anxieties, fears, information gaps, stress, anger, aggression, depression, loneliness and related mental and emotional needs for the well-being of adolescents;
- Sensitisation and education on gender-based violence and other forms of abuse and violence, how they can protect themselves, right to legal redress and rights related to medical examination - to be woven into the educational curriculum on responsible sexuality and gender equality;
- Recognition of the importance of physical activities for overall health and development;
- Integrating peer education on health and nutrition into existing programmes;
- Official recognition of the need of married and unmarried adolescent boys and girls to receive reproductive health education and access to counselling and services.

D. LAWS & JURISPRUDENCE

E1. Constitutional Guarantees

Part III of the Constitution guarantees fundamental rights to all persons. These include the right to life (Article 21) and the right to equality before law and equal protection of the laws.31 In the Fundamental Rights chapter, the recognition for affirmative action for socially and educationally...

29 Dasra (2012) documents the work of ten non-profit organisations working on empowerment of adolescent girls in the states of Bihar, Rajasthan and Uttar Pradesh; Report of UNFPA (2003) documents the work of a few selected programmes and interventions of non-profit organisations related to adolescents.
30 Report of Working Group on Adolescents for Tenth Five Year Plan, Planning Commission of India, pp. 35-36, para 7.5
31 Article 14
disadvantaged groups is significant. Although this chapter prohibits discrimination on stated grounds, including on the ground of sex, the Constitution recognises the need for affirmative action (positive action) by the state to set right past discriminatory practices and disadvantages to socially and educationally disadvantaged groups. In the case of women and children (including adolescent girls), this is undertaken through the enactment of special laws for them.\textsuperscript{32}

Part IV of the Constitution lists out the Directive Principles of State Policy (DPSP). These are policy considerations that should govern all state actions, interventions and programmes. The relevant provisions focusing on issues of health, nutrition, a decent standard of living, rest and leisure are as follows:

- To secure to the citizens the right to adequate means of livelihood; that the ownership and control of material resources of the community are so distributed as best to subserve the common good; that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; that the children are given the 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. (Article 39)

- State, within the limits of its economic capacity and development, has to make effective provisions for securing the right to work, education and public assistance in case of unemployment, old age, sickness and disablement (Article 41)

- To secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work that ensure a decent standard of life and full enjoyment of leisure and social and cultural opportunities, and in particular the state shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas living wage etc. for workers (Article 43)

- To raise the level of nutrition and standards of living of the people and to improve public health (Article 47)

**E2. Relevant Laws**

Some of the most significant healthcare laws in India that apply to adolescent girls include the Medical Termination of Pregnancy Act 1971 and Pre-Conception and Pre-natal Diagnostic Technique (Regulation and Prevention of Misuse (PCPNDT)Act 1994, which focus on issues of reproductive health. Laws on mental health and persons with disabilities also apply to varied groups of persons, including adolescent girls. The law on food security, which is the pipeline, is expected to contribute to an enabling environment for exercise of adolescent girls' right to food and nutrition. The salient features of and drawbacks in these laws are given discussed below:

**Medical Termination of Pregnancy Act, 1971**

In India abortion per se is not illegal. The Medical Termination of Pregnancy (MTP) Act 1971 was apparently enacted due to the need to regulate unsafe abortions that negatively impacted women's lives. Prior to this law, the Indian Penal Code (Act No 45 of 1860) permitted abortion only when it was necessary for saving the life of the woman. This includes adolescent girls who are pregnant, as there is no separate law on the subject for such girls. Salient features and drawbacks of the MTP Act are given in Table 6.2 below.

\textsuperscript{32} Article 15(3) states: "Nothing in this article shall prevent the State from making any special provision for women and children."
Table 6.2: Medical Termination of Pregnancy Act 1971: Salient Features and Drawbacks

<table>
<thead>
<tr>
<th>Grounds on which abortion is allowed</th>
<th>Drawbacks / Concerns</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;medical reasons&quot; &quot;reasons related to progency &quot;failure of contraceptive &quot;human reasons &quot;socio-economic reasons. Abortion on any other grounds is an offence punishable under the Indian Penal Code.</td>
<td>The law allows abortion due to failure of contraceptive only to married women. It excludes, from its purview, sexually active, adolescent girls who may become pregnant due to failure of contraception.</td>
</tr>
</tbody>
</table>
| Importance of medical opinion | Abortion can be done only if doctor is of opinion that it is required.  
- Opinion of one practitioner is required in case of pregnancy of less than 12 weeks  
- Opinion of two practitioners if the pregnancy is between 12-20 weeks  
- Third trimester abortion is not allowed. | Requirement of consent of guardian for abortion of adolescent girls virtually implies that there are no safe abortion facilities available for teenage pregnancies without marriage. It adverse effect on their health. |
| Consent | Only of pregnant woman  
- Consent of husband / relative not required  
- Exception: minor / lunatic | |
| In practice | The abortion facilities offered by the public health care system are usually accompanied with pressures related to the family planning programme and is most often linked with the acceptance of a contraceptive method. In reality, there is no easy access to abortions through abortion has been legalized in India. |
| Others | No unconditional right to abortion. The law is not based on the notion of privacy of the woman / girl over her own body, premised on her autonomy to decide her own course in life. |

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32 Explanation 2 to S. 3 of the MTP Act states as follows: "Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman." For more details on the issue, see Rehman, Talha A & Siddiqui, Ayesha T.(2007)

33 Section 3(2)(a) and 3(2)(b) of the MTP Act, 1971

34 Section 4 of the MTP Act, 1971.

Diagram 6B: Reasons for Which Abortion (Medical Termination of Pregnancy) May be Sought


As it became progressively easier to identify the sex of the foetus at an early stage, pre-natal diagnostic techniques began to be deployed for sex-selective abortions. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) (PNDT) Act was enacted in 1994. To plug the loopholes in the Act, following the implementation of interim orders in CEHAT v Union of India36 an amended Pre-conception and Pre-natal Diagnostic Techniques (PCPNDT) Act was enacted in 2003.

This law provides for the regulation of the use of pre-natal diagnostic techniques for the purpose of detecting genetic abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of the misuse of such techniques for the purpose of pre-natal sex-determination.37

The law also bans the process of selection of the chromosome and the determination of the sex of the foetus. It further


37 Preamble to PNDT Act
prohibits any advertisements relating to pre-natal determination of sex and prescribes punishment (imprisonment and fine) for its contravention. It remains silent about the process that follows such sex-determination, which in many cases is the termination of pregnancy. Hence the PCDPNT Act does not make the act of abortion illegal. This exclusion was deliberate - as the purpose of the law was not to make abortion illegal but to prohibit such methods that can result in sex-selective abortion.

However the confusion created by the use of the term "female foeticide" threatens to erode the right of adolescent girls and women to abortion. The PNDT Act, in its Statement of Objects and Reasons, states clearly that the Act is intended for the prevention of the misuse of such techniques for the purpose of pre-natal sex-determination leading to female foeticide... (emphasis added). The use of the term in law has encouraged its use in public discourse, connoting that the foetus is a separate legal entity, entitled to right to life, independent of the woman or adolescent girl in whose womb the foetus is. Such an articulation creates a conflict of rights for women and girls, which is not intended by the Constitution, MTP Act, PCDPNT Act or the human rights law.

**The Mental Health Act 1987**
A law on mental health is essential for protecting the entire gamut of human rights and dignity of persons who are mentally challenged on one hand, and for creating a framework and enforceable standards by which the government ought to provide quality, affordable and accessible medical care. The law on mental health has to be read in conjunction with the Disabilities Act (discussed below) as they, together, form the legal framework on mentally challenged persons. Mental health experts from the development sector have stopped referring to all mental disorders as mental illness and prefer to use the term mental disability / mentally challenged for psychological ill health.

A gender perspective on mental health issues clearly highlights the fact that women and girls are more vulnerable among the mentally challenged.38

The Mental Health Act was enacted in 1987, and replaced the older Indian Lunacy Act 1912. The 1987 Act came into force in 1993. The salient features of this law are:39

- More humane approach to problems of mentally ill persons by changing the terminology e.g. lunatics and criminal lunatics have been replaced by the term mentally ill person and mentally ill prisoner etc.
- Creation of Central and State Mental Health Authorities-a welcome step to safeguard the interests of the mentally ill person under one authority
- Procedure for admission and discharge of voluntary patients have been simplified and liberalized.
- Minor can be admitted with the consent of a guardian under this act. (This provision did not exist in the Indian Lunacy Act, 1912)
- Separate provision for admission of involuntary patients under category "Admissions Under Special Circumstances"
- Special centres for special populations such as drug addicts, persons under 16 years and mentally ill prisoners.
- Establishment and maintenance of psychiatric hospitals and psychiatric nursing homes in private sector (did not exist in the earlier law).
- Discharge procedure have been made easy and more simplified.

While the Mental Health Act 1987 does not explicitly mention the human rights of mentally ill persons it does include some rights. Some of these rights are:

38 For a gender analysis of mental health, see Davar, Bhargavi V. (1999); Patel, Vibhuti. (2008); Thara, R (2004); and Kumari, Kanchan (2008)
39 Extracted and compiled from J.K.Trivedi (2009), pp. 13-14
• No mentally ill persons shall be subjected during treatment to any indignity whether physical or mental or cruelty.
• No mentally ill person under treatment shall be used for the purpose or research unless such research is of direct benefit to diagnosis or treatment, or the consent is given voluntarily.
• A mentally ill patient shall be treated at the expense of the Government if admitted as an inpatient and does not have property.
• A mentally ill person has the right to legal counsel at the expense of the State in the District Court.

Some critical concerns with regard to the law, which disproportionately impact the rights of adolescent girls are:
• No importance to family and community psychiatry / home treatment;
• No provisions for punishing family members / relatives / officials who request unnecessary detention of a person to such hospitals, and no provision for compensation of persons detained;
• The law permits inspecting teams to monitor the functioning of private mental hospitals but not the government-run ones - where violations are rampant;
• The law does not address the patriarchal biases in medical establishments - these include stereotypical understanding of girls’ role in family / society, trivialising girls’ suffering and witch-hunting of lesbian girls by mainstream psychiatrists who provide “treatment” (such as aversion therapies and administration of electrical shocks) for correcting “deviant behaviour”.
• It does not cover alternative systems of “mental health care” such as the use of magicians, quacks, witch-doctors and healers - which are frequently used for “treating” girls and cause adverse impact on their health.
• The Act also does not spell out any minimum standard of care and treatment that such persons should be entitled to.
• There is no provision of accountability for any negligence in the care and treatment of inmates of mental health institutions.

In 2011, the Indian government (Ministry of Health and Family Welfare) proposed a new Mental Health Care Bill, which reportedly seeks to decriminalize attempts to suicide and “humanize” mental health care. However health advocates and activists have expressed serious concerns on various issues, including provisions allowing the use of electro-convulsive therapy and psychosurgery for mental disorders, which they have termed barbaric.

In Erwadi village in Tamil Nadu, 26 mentally ill persons were charred to death after they were unable to escape from a fire in the mental asylum, as they had been chained to their beds. In 2003, a 17 year old schizophrenic girl was raped at National Institute of Mental Health and Neuro Sciences (NIMHANS). A mentally retarded minor girl was gang-raped and made pregnant at a Nari Niketan in Chandigarh in 2008. Many mentally and physically challenged girls between the ages of 14 and 18 were found to be physically abused for several years at a Panvel shelter home - Kalyani Bal Seva Sanstha - in Maharashtra in 2011. In April 2012,
three minor girls, including a mentally challenged girl, were sexually assaulted by a worker at an orphanage in Allahabad run by the social welfare department of the UP government.46 These are some examples of the wide gap between the law and reality on the issue of mental health services and institutions, as well as the particular vulnerability that adolescent girls who are mentally challenged face in state institutions. These are also illustrations of failure of state responsibility to protect mentally challenged girls - indicating that enactment of a law and construction of state institutions are clearly required but not adequate.

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

The PWD Act is the main law concerning rights to persons with disabilities and the consequent obligations of the State. It is based on the philosophy of social justice enshrined in the Indian Constitution. The law has provisions for the following services:

- Early detection and prevention;
- Education;
- Employment - reservation of posts for persons with disabilities;
- Affirmative action - including aids and appliances to persons with disabilities, preferential allotment of land for certain purposes;
- Provisions prohibiting discrimination against persons with disabilities - in transport, on the road, in a built environment, in government employment;
- Recognition of institutions for persons with disabilities
- Establishment of Chief Commissioner and Commissioners for persons with disabilities, mandated with the responsibility of protecting and promoting the rights of the disabled.

The Act fails to impose mandatory obligations on the appropriate government and leaves the realization of opportunities to the discretion of the various state governments. The implementation of provisions pertaining to non-discrimination and physical access depends on the state government's "limits of ...economic capacity and development". The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act) governs all issues of disability. Although this law would be applicable to physically / mentally challenged adolescent girls, this law has not integrated a gender perspective within its framework or provisions. It is silent on the discrimination and violence faced by women and girls that differentiates their situation from that of men and boys with disabilities.47

National Food Security Bill 2011

In 2011, the Indian government introduced the National Food Security Bill. The Bill promises subsidised food security to over 63% of the country's population, including cheaper grains to its poor. It is also expected to give the government a better idea of how much grain India would have available for exports, after maintaining comfortable buffer stocks for domestic consumption. This was introduced in the Lok Sabha on 22 December 2011, but was referred to the Parliamentary Standing Committee on Food which is presently considering the provisions of the Bill and the varied criticisms to it. As of July 2012, the government is yet to decide on a revised version of the Bill and introduce it in the Parliament. This law, once it comes into force, is intended to benefit the poorest people, including adolescent girls from the poorest communities.

E3. Judgments

The Supreme Court of India has given a broad interpretation of the fundamental right to life - a judicially enforceable right.

46 Minor Girls Raped in Allahabad Orphanage', The Times of India, 7 April 2012

47 For more details see Raha, Swagata (2009)
In one judgment, the Supreme Court observed that 'life' in Article 21 of the Constitution does not connote merely physical or animal existence, but "embraces something more". If further opined (in the same judgment) as follows:

"We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head."

Through landmark judgments, right to life has been broadly interpreted to include the right to health, right to food and right to livelihood.

**Landmark Judgment on Right to Food**

In April 2001, People's Union for Civil Liberties (PUCL, Rajasthan) filed a petition in the Supreme Court seeking legal enforcement of the right to food, by arguing that the fundamental right to life guaranteed under Article 21 of the Constitution included the right to food. This petition was filed at a time when the country's food stocks reached unprecedented levels (60 million tonnes in Food Corporation of India's godowns) which was 40 million tonnes above the buffer stock of 20 million tonnes required. Yet, nationwide, there were reports of people dying of starvation. The petition addressed varied issues such as inadequate drought relief, chronic hunger, severe under-nutrition, implementation of food-related schemes, starvation deaths, the breakdown of the Public Distribution System (PDS) as well as general issues of transparency and accountability. In response to this petition, the Supreme Court issued orders from time to time on various aspects of the right to food.

The court affirmed that the right to food was an integral part of right to life with dignity guaranteed by Article 21 of the Constitution of India. It directed that all the PDS shops, if closed, were to be re-opened within one week. The Food Corporation of India (FCI) was ordered to ensure that food grains do not get wasted. The states were given the responsibility over implementation of government schemes. This, in effect, converts the benefits of these schemes into legal entitlements. Although this judgment does not focus specifically on food and nutrition of adolescent girls, it is a useful tool for advocacy, in order to hold the state accountable, for providing food and nutrition security to the most underprivileged communities, including adolescent girls.

**Judgment on Implementation of PCPNDT Act**

Although the PCPNDT Act has been in existence since 1994, the 2001 and 2011 census indicate a sharp decline in the number of girls per 1000 boys in the 0-6 age group. This is a clear illustration of the ineffectiveness of the law in curbing sex-selective abortions. A public interest litigation (PIL) filed by CEHAT and MASUM and an individual activist-Sabu George in 2000, sought for rigorous implementation of the central legislation by the central and state governments. The PIL also sought to interpret the legislation and/or to demand amendments to ensure that

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48 Francis Coralie Mullin v. Union Territory of Delhi and Others AIR 1981 SC 746: 1981 (1) SCC 808
49 State of Punjab vs. Mohinder Singh Chawla AIR 1997 SC 1225
50 Madhu Kishwar v. State of Bihar 1996 (5) SCC 125
53 The schemes include the Employment Assurance Scheme, which may have been replaced by a Sampurna GraminYojana, Mid-day Meal Scheme, Integrated Child Development Scheme, National Benefit Maternity Scheme for BPL pregnant women, National Old Age Pension Scheme for destitute persons of over 65 years, Annapurna Scheme, Antyodaya Anna Yojana, National Family Benefit Scheme and Public Distribution Scheme for BPL & APL families.
54 For more details, see http://www.righttofoodindia.org/schemes/scheme.html, accessed 18 March 2012
the techniques that use pre-conception or during-conception sex selection are also brought under the purview of the Act. In pursuance of the PIL, the PNDT Act was amended in 2002 to take into account the emerging technologies prior to and after conception, and the problems faced in implementation of the law. The amendments came into effect on 14th February 2003. In 2003, the Supreme Court issued orders and elaborate guidelines for an effective implementation of the Act.

Judgment on Reproductive Rights of Mentally Challenged Girls / Women

In the 1990s, the practice of forced hysterectomies on mentally challenged girls and women in a state-run institution in Shirur, Maharashtra brought the issue of reproductive rights of such persons to the fore. In 1994, forced hysterectomies were conducted on several mentally challenged women between 18 and 35 years of age at the Sassoon General Hospital in Pune on the ground that they were incapable of maintaining menstrual hygiene and hospital staff found it a strain on their resources and time. Consent was obtained from the guardians and an intrusive and irrevocable surgery, was carried out. Reports point out that the hospital made no effort to maintain basic menstrual hygiene.55

Against this backdrop, a public interest litigation was filed - Dr Anant Phadke and others v State of Maharashtra56 - where the Bombay High Court was asked to restrain the state from taking the decision to perform such an intrusive surgery. The state cited reasons of inability to maintain personal hygiene and danger of pregnancies arising from sexual assault to support the decision to sterilise. This argument was partly absurd as it has the duty to protect women and girls from sexual assault within state-run institutions. In actuality, the hysterectomies were performed for the convenience of institutions and their staff, and not because they were medically necessitated. The mass hysterectomies were stayed due to a public outcry from women’s rights activists as well as health professionals. However, hysterectomies had already been performed on 11 girls in the age-group of 13-35, which could not be undone.57

In 2004, the West Bengal Human Rights Commission was reportedly approached by the father of a 17-year-old girl with mental and physical disabilities, who sought permission to remove her ovaries. He was turned away as the Commission "cannot decide on an ethical issue".58 The issue threatens to rear its head from time to time. In 2008, the Maharashtra government had again proposed hysterectomies for mentally challenged women and girls in state institutions, and was strongly opposed by civil society groups.59

In a landmark order in July 2009, the Supreme Court stayed the medical termination of pregnancy of a 19-20 year old woman who was a victim of rape, residing in a home for the mentally challenged, in Chandigarh. It ruled that abortion cannot be performed on an adult woman without her consent, even if she suffered from intellectual impairment. It said that such an abortion without consent was 'anti-democratic' and would violate the fundamental right to 'equal protection before the law' under Art. 14 of the Indian Constitution. In this judgment, the Supreme Court refused to dilute the requirement of consent under the MTP Act, stating that the same would amount to an "arbitrary and unreasonable restriction on the reproductive rights of the victim". Though the case was specifically in the case of a woman who was mentally impaired, the Court made pertinent

55 See Ghai, Anita (2002)
56 Writ Petition No. 1527 of 1994. Copy of the petition can be accessed on http://www.lawyerscollective.org/content/mentally-ill-women
58 Konar, Debasis, 'Rape fear sends father into tizzy', Times of India, September 24, 2004
observations with regard to the wider gamut of reproductive rights that are applicable to all women. It stated that a woman’s right to make reproductive choice was a dimension of ‘personal liberty’ as understood under Article 21. Thus, the state has to guarantee a woman her reproductive rights, which includes an entitlement to carry a pregnancy to its full term to give birth and to subsequently raise children.\textsuperscript{60} While this judgment was in the context of adult women, and not adolescent girls, it has generated an unprecedented discussion on the reproductive rights of persons with disabilities.

E. CONCLUSION

Adolescent girls’ right to health is the right of enjoyment of goods, services, facilities and conditions necessary for leading a healthy life. The government is mandated to provide health services to adolescent girls, without discrimination based on their age or sex, and also ensure that health care services are available, affordable, accessible, accessible, appropriate and of good quality. The overall health, food and nutritional status of adolescent girls in India is poor, and requires immediate intervention. International standards on rights of health, particularly of girls, require that health policies, programmes and interventions address specific needs of girls and women, and integrate their concerns.

Since the 1970s, the Indian government has formulated many policies and operationalized them through programmes, schemes and interventions. A majority of these view adolescent girls as present and future wives and mothers, therefore emphasising on their reproductive health, to the detriment of other aspects of health, food and nutrition. However in the last decade, there has been a paradigm shift in understanding and addressing adolescent girls’ issues related to health, food and nutrition from a holistic perspective. A rights-based approach has been adopted in government policies in recent years. While the policies have room for improvement, their benefit to adolescent girls from marginalised and poor communities cannot be ignored.

Laws and judgments in general, and those related to medical termination of pregnancy, prohibition of female sex-selective abortions, mental health, disabilities and food security in particular, play a complementary role to policies, programmes and interventions. Together, they provide avenues for adolescent girls and persons who advocate their rights, to assert and facilitate the full enjoyment of right to health, food and nutrition.

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Reports

Chapter 7
Age Of Marriage
And Agency In Marriage

"I am one of those unfortunate Hindu women whose hard lot is to suffer the unnameable miseries entailed by the custom of early marriage. This wicked practice of child marriage has destroyed the happiness of my life. It comes between me and the things which I prize above all others - study and mental cultivation. Without the least fault of mine I am doomed to seclusion; every aspiration of mine to rise above my ignorant sisters is looked down upon with suspicion and is interpreted in the most uncharitable manner."

- Rukhmabai

Much has been talked, written and discussed about the early marriage of adolescent girls in India, its magnitude and its consequences. Matrimonial, criminal and other laws, as well as policies and programmes in India have responded to this from time to time, through varied considerations ranging from the adolescent girls' welfare to India's increasing population. As the Indian government itself acknowledges, unfortunately, most policy documents of the government tend to look at girls primarily as future wives or mothers and policy documents link early marriage, teenage pregnancy and child survival to girls' education.2 This chapter discusses the magnitude and consequences of early marriage of adolescent girls, responses of law and policy to this, the related issue of age of consent to sexual relationship, as well as highlights the debate around minor girls' agency in marriage.

A. HISTORICAL CONTEXT OF THE DISCOURSE ON CHILD MARRIAGE AND AGE OF CONSENT

'Age of consent' refers to the age at which a person's consent to engage in a sexual intercourse is considered valid in the eyes of law. Engaging in sexual activity with persons below this stipulated age is a criminal offence, even if that person consented to the same. Much of the public discourse today - on validity of child marriages, recognizing marital rape as an offence, legal stipulation of age of consent to sexual intercourse, agency of women vis-à-vis marriage, validity of choice marriages of minors as well as restitution of conjugal rights- can be better understood in the light of the historical context of the 'age of consent debate' in colonial India.

Nineteenth century colonial Bengal became the centre of a vociferous debate on the issue of child marriage and age of consent to sexual intercourse. It was triggered largely by two incidents - the Rukhmabai case decided by the Bombay High Court in 1885, followed by the death of a eleven-year old girl, Phulmonee, in 1890 and the prosecution of her husband thereafter for causing her death by raping her. Both the cases marked the tension between the Hindu orthodoxy on one hand that upheld child marriage and perceived any opposition to it as an affront to tradition and social reformers opposing such religious bigotry on the other hand.3

1 Extract from a letter written by Rukhmabai, a victim of child marriage, to The Times of India on June 26, 1885, and reproduced in Sagade, Jaya (2005)

2 Report of the Working Group on Adolescents for the Tenth Five Year Plan, Planning Commission, Government of India, at p. 20

3 Goswami, Ruchira (2010)
In Rukhmabai’s case - Dadaji vs. Rukhmabai - the problem of enforced consummation of marriage - a euphemism for marital rape - and its consequences on adolescent girls in early marriages came into focus. Rukhmabai was married at the age of 11 to Dadaji who was then 19 years old. They never lived together in their 11 year married life. Rukhmabai wrote that she did not wish to live with him as he had refused to get himself educated, he had immoral pursuits, ill-health and was unable to provide for her material needs. As an educated woman of 22 years old, Rukhmabai refused to start cohabitating with Dadaji on his demand. He then petitioned the court for restitution of conjugal rights, in an attempt to reclaim his rights to cohabit with her on the basis of their marriage. The Bombay High Court, in a judgment by a single judge, Justice Pinhey, rejected Dadaji’s claim, on the ground that the marriage had never been consummated in the first place, and hence there was no question of ‘restitution’. The judge had declined the relief on the ground that it was an outdated medieval Christian remedy under the English law and argued that the Hindu law did not recognize such a barbaric custom. Sudhir Chandra, commenting on the judgment, describes the judge’s closing address as a moral plea against child marriage. It was ironical that Dadaji, supported by the conservatives, approached English courts rather than the traditional caste panchayats, for claiming a remedy - restitution of conjugal rights - that did not exist in traditional Hindu law but was an import from British law. When the petition was turned down, the judgment met with stiff resistance and opposition from Hindu orthodoxy, which viewed it as British interference with Hindu personal law. In the subsequent year, caving in to political pressure from Hindu orthodoxy, an Appellate Bench ruled in favour of the husband. As Flavia Agnes opines, the judgment served to subvert the element of consent and agency that Rukhmabai had introduced into the domain of Hindu conjugality. Rukhmabai defied the court’s order, stating that she preferred imprisonment for violating the order than remaining in a marriage that she did not want. While Rukhmabai reportedly had an out of court settlement with Dadaji, the judgment raised important questions of consent to marriage and agency of girls and women.

In the other instance, 11 year old Phulmonee had died of bleeding after she was raped by her 29 year old husband, Hari Maiti, in Bengal. In court, when Hari Maiti was prosecuted, Phulmonee’s mother testified as follows: “I saw my daughter lying on the cot, w retting in blood.” Phulmonee’s death was widely reported and discussed, and condemned by social reformers and feminists, including Pandita Ramabai and Rukhmabai. Hindu norms made it mandatory for husbands to have sexual intercourse with their child wives soon after the first menstrual period, and British law penalized marital rape only if the girl was under 10 years of age. Since Phulmonee was 11 years old, Hari Maiti was not charged with rape and murder, but of rash and negligent acts. This became an issue that stimulated public opinion in favour of increasing the age of consent for sexual intercourse from 10 years to 12 years, subsequently effected through the Age of Consent Act of 1891.

Both these cases of the 19th century raised important issues of customs and traditions vis-à-vis rights of girls and women.

4 Moschetti, Carole Olive (2007)
5 Restitution of conjugal rights was not a remedy available under Hindu law, but was imported from British ecclesiastical law. Through the implementation of this law, girls and women who were unwilling to live with their husbands, were deprived of their bodily integrity and autonomy, and could be forcibly made to cohabit with their husbands, and thus remain vulnerable to forced sexual intercourse during the entire phase of marriage spanning into several years. They could not choose to live in their parental home.
6 Agnes, Flavia (2011), p. 7
7 Chandra, Sudhir (1999)
8 Agnes, Flavia (2011), p. 7
within marriage, autonomy of women and girls, consent and agency in marriage and provided the groundwork for subsequent discourses and legal interventions on child marriages in the 20th century. This includes the age of consent being raised to 18 years in the light of the Protection of Children from Sexual Offences Act 2012.\textsuperscript{10}

B. AGE OF MARRIAGE & THE LAW

Four sets of laws address the issue of age of marriage, without necessarily existing in harmony with each other: Constitutional law, the Matrimonial laws, the Indian Penal Code and the Prohibition of Child Marriage Act (PCMA) 2006.

\textit{Constitutional Law}

Fundamental right to life, education - as guaranteed under Article 21A and right to health (read into right to life under Article 21) are some of the rights guaranteed by the Indian Constitution, which are violated through child marriages. On the other side of the coin, right to life, equality and non-discrimination, freedom of expression and freedom of movement are fundamental rights guaranteed by the Indian Constitution. An adolescent girl's exercise of these rights is violated to varying degrees when girls are either forcibly married, or are forced to repudiate their marriage of choice. The Constitution also recognises 'personal laws' which are religion-based laws concerning all aspects of marriage, divorce and issues arising out of marital relationships.

Right to marry is not explicitly stated in the Indian Constitution. The Supreme Court viewed the right to marry as a component of right to life under Art 21 of the Indian Constitution. In Lata Singh vs. State of Uttar Pradesh, the court observed that:

"This is a free and democratic country, and once a person becomes a major he or she can marry

\textsuperscript{10} For a critique of the same and its possible ramifications for children, see Bharti Ali, 'Age of Consent Catastrophe', The Tribune, 21 May 2012

whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste marriage the maximum they can do is that they can cut off social relations with the son or daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste marriage\textsuperscript{11}.

A writ of habeas corpus (which literally means 'produce the body') is a Constitutional remedy that has been traditionally used in cases of political prisoners, illegal detainees and persons who are forcibly disappeared from and by officials of state institutions, in order to hold the latter accountable under law. However, the writ of habeas corpus has also been used in contexts of choice / elopement marriages, indicating the nature of custodial power over women by their natal families in alliance with state and non-state bodies of law and governance.\textsuperscript{12}

\textit{Matrimonial Laws}

For each religious community in India, conditions / procedures for marriage and issues arising from marriage (such as maintenance, judicial separation, divorce, custody of child) are governed by a specific set of matrimonial laws. Each such law prescribes minimum age for marriage in conditions of marriage. Except Muslim law, which prescribes age of puberty (15 years) as the minimum age of marriage for both parties, all other laws prescribe 18 years for girls and 21 years for boys as the minimum age for a legal marriage.\textsuperscript{13}

However, this does not necessarily mean that marriage of girls below the age of 18 years is automatically invalid (void) in law. Under Section 11 of the Hindu Marriage Act, however,

\textsuperscript{17} Lata Singh vs. State of Uttar Pradesh AIR 2006 SC 2522

\textsuperscript{18} For an elaborate discussion on the use of habeas corpus with regard to choice marriages, see Baxi, Pratiksha (2006)

\textsuperscript{13} S. 5 (iii) of Hindu Marriage Act 1955; S. 60 (1) of The Indian Christian Marriage Act 1872; S. 3 (1) (c) of Parsi Marriage and Divorce Act; S.4(c) of The Special Marriage Act.
a marriage is void only on the grounds of having a spouse living at the time of marriage, or lack of valid consent, or because the parties fall within a "prohibited relationship". Thus a marriage where the bride is below the age of 18, though in contravention of the age requirement under Section 5 (iii), does not make a marriage void under the Hindu Marriage Act. Neither is an under-aged marriage voidable under Hindu law. Voidable marriages are dealt with under Section 12 of the Act. Under this, marriages are voidable and can be annulled by a decree on certain grounds, but a marriage where the bride is below 18 years of age is not one of them.

Thus marriage where the bride is below 18 years of age or the bridegroom below 21 years is neither a void nor voidable marriage under the Hindu Marriage Act. However, the Act has a penalising provision for violations related to the age of the bride and grooms. By this provision, a marriage solemnised between a bride below 18 years or a bridegroom below 21 years is punishable with simple imprisonment of 15 days or a fine of Rs 1,000. Since 2006, such marriages have become voidable at the instance of the minor, in accordance with the provisions of the Prohibition of Child Marriage Act 2006 (discussed below).

The Muslim law related to marriage is uncodified. The law is settled on the issue of validity of marriages entered into by minor girls. Courts have consistently held that a Muslim girl who has attained puberty - 15 years of age - can marry without the consent of her parents and that such a marriage would not be invalid, and that such girls have the right to reside with their husbands even if they have not reached 18 years of age. The Dissolution of Muslim Marriages Act 1939 grants the option of puberty, under which a minor girl who was contracted by her father or legal guardian into a marriage before the age of 16 may repudiate the marriage before the age of 18, provided the marriage has not been consummated. This principle was incorporated into and adapted for the Prohibition of Child Marriages Act 2006 and made available to minors belonging to all religious communities, with a stipulation that this option is to be exercised within two years of attaining majority, and through a petition only by the child who is party to marriage and no one else. This is discussed in further detail below.

Under the Special Marriage Act 1954, the age stipulation is 18 years for girls and 21 years for boys. Contravention of this provision makes the marriage null and void. Under the Indian Christian Marriage Act 1872 states the age stipulation is 18 years for Indian Christians is 18 years for girls and 21 years for boys. However there are provisions in the law that refer to consent of father, guardian or mother of minor to the marriage, thereby conceding that marriage of minors is possible under the law under certain circumstances. In The Parsi Marriage and Divorce Act 1936, the age stipulation is couched in a negative language. It states that certain conditions under which no marriage will be valid. One such condition is that the girl is below 18 years of age and the boy is below 21 years of age.

The minor girl is still not completely independent under the

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16 The relevant section reads as follows: 2. Grounds for Decree of Dissolution of Marriage - A woman married under Muslim Law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely:.... (vii) that she, having been given in marriage by her father or other guardian before she attained the age of sixteen years, repudiated the marriage before attaining the age of eighteen years: Provided that the marriage has not been consummated.
17 S. 4(c)
18 S. 24 (1)(i) of the Special Marriage Act 1954
19 S. 60(1) of the Indian Christian Marriage Act 1872
20 S. 19 and S. 44 of the Indian Christian Marriage Act 1872
21 S. 3(1)[c]
law as under all personal laws, on marriage, the husband is her guardian.22

The Prohibition of Child Marriage Act 2006
The Prohibition of Child Marriage Act 2006 replaced the Child Marriage Restraint Act 1929 after it was found that the latter law was a proven failure in curbing the practice. The changes it brought about in the law related to child marriages is as follows:

- It gives the child (below 18 for girls) the option to end the marriage at any time subsequent to the marriage, and before 2 years from attaining majority, that is before the age of 20; (S. 3, reproduced below)
- In situations where she exercises the option and ends the marriage, the law also provides for maintenance and residence for the girl till her remarriage from the male contracting party or his parents.
- It provides for appropriate orders for custody for any child born from the marriage.
- It has enhanced all the punishments for contracting a child marriage. The punishment for a male over 18 years of age has been enhanced to rigorous imprisonment of up to 2 years or with a fine upto 1 lakh rupees or both.
- A similar punishment is prescribed for anyone who performs, conducts, directs or abets any child marriage, for anyone who solemnizes a child marriage including by promoting such a marriage, permitting it to be solemnized or negligently failing to prevent the marriage. However, no woman can be punished with imprisonment.
- The Act also makes all offences cognizable and non-bailable.

- The Act further allows for injunctions to prohibit child marriages including ex parte interim injunctions. It states that any child marriage solemnized in contravention of an injunction order will be void. In all other situations, the child marriage itself is not invalidated.

Arguably, one of the most important provisions in this law is that which bestows upon a child the option to avoid the marriage. The provision is reproduced below:

3. Child marriages to be voidable at the option of contracting party being a child.

(1) Every child marriage, whether solemnised before or after the commencement of this Act, shall be voidable at the option of the contracting party who was a child at the time of the marriage:

Provided that a petition for annulling a child marriage by a decree of nullity may be filed in the district court only by a contracting party to the marriage who was a child at the time of the marriage.

(2) If at the time of filing a petition, the petitioner is a minor, the petition may be filed through his or her guardian or next friend along with the Child Marriage Prohibition Officer.

(3) The petition under this section may be filed at any time but before the child filing the petition completes two years of attaining majority.

(4) While granting a decree of nullity under this section, the district court shall make an order directing both the parties to the marriage and their parents or their guardians to return to the other party, his or her parents or guardian, as the case may be, 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:

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22 See for example S. 6 of the Hindu Minority and Guardianship Act, 1956 which stipulates the husband to be the guardian of married minor girl, and S. 21 of the Guardians and Wards Act 1890 which states that a minor boy has the capacity to be the guardian of his minor wife.
Provided that no order under this section shall be passed unless the concerned parties have been given notices to appear before the district court and show cause why such order should not be passed.

The importance of this section was elaborately discussed in Sh. Jitender Kumar vs State & Another, where the Delhi High Court said that this provision, irrespective of whether a child marriage is or is not voidable under personal law, makes every child marriage voidable at the option of a party to the marriage, who was a child at the time of marriage. It further opined that where, earlier, a child marriage may not have been voidable under personal law, as in the case of the Hindu Marriage Act, by virtue of the secular provisions of Section 3 of the Prohibition of Child marriage Act 2006, it has explicitly been made voidable at the option of the child spouse. But, nobody other than a party to the marriage can petition for annulment of the marriage.

The Indian Penal Code

Under the Indian Penal Code, the following offences directly relate to/are used in contexts of under-aged marriages:

- **Wrongful restraint** - is the preventing of a person from proceeding in any direction in which that person is entitled to proceed. (S. 339 & 341)

- **Wrongful confinement** - Wrongful confinement is the preventing of a person from proceeding beyond certain limits (S. 340 & 342)

- **Kidnapping from lawful guardianship** - is the enticing of a male under 16 years of age, or a female under 18 years of age, or a person of unsound mind from custody of a lawful guardian without consent of guardian. (S. 361)

- **Abduction** - is the compelling or inducing of a person by force or deceit to go from any place. (S. 362)

- **Kidnapping women to compel marriage**, seduction for illicit intercourse etc. (S. 366)

- **Inducing of a minor girl under 18 years of age to do any act that may force or seduce her to illicit intercourse with another person** (S. 366A)

- **Rape** - Sexual intercourse with a woman without her consent or against her will under certain circumstances - sexual intercourse by a husband with his wife who is under 15 years of age amounts to rape. (S. 375)

- **Cohabitation caused by deceitfully inducing woman under belief of lawful marriage** (S. 493)

- **Going through unlawful marriage ceremony** (S. 496)

- **Enticing, detaining a woman with a criminal intention** (S. 498)

Even though the above-stated provisions in the IPC address the issue of marriage of minor girls, it needs to be remembered that these provisions are intended primarily at securing the right of the parent / guardian to custody over the minor girl as and when they choose to. These provisions enable parents / guardians to bring the criminal law into motion when their daughter marries outside their caste / class / religion or otherwise transgresses social norms (including that of sexuality), while on the other hand, they themselves perform child marriage of their daughters within the caste / class / religious boundaries. Hence the primary focus of parents / guardians using these provisions in the context of elopement marriages is not to protect the rights of their daughter but to exercise control over the girl using the state machinery and the power of law.

Under the Indian Penal Code, sexual intercourse with a wife under the age of 15 is considered rape and is an offence. The law on statutory rape of married female minors of their
husbands is anchored in the colonial legal history on the prevention of child marriage, and continues to be viewed as deterring child marriage rather than entailing the protection of married minors from sexual abuse in marriage. Further, it needs to be borne in mind that there are few avenues in law for adolescent minor girls to secure her release from the custody of her parent / guardian on grounds of domestic violence, physical abuse, mental harassment or neglect.

C. CHOICE MARRIAGES: PARENTAL AUTHORITY VERSUS AGENCY

Are all marriages of minor girls necessarily forced marriages? The phenomenon of choice marriages - in which minor girls and young women elope with a partner of their choice and get married, as their relationship is not accepted by their families - proves to the contrary. In the modern environment, norms concerning interaction between adolescents of opposite sexes is more relaxed than in the past. With far more opportunities for social interaction - such as co-educational schools and colleges, mobile phones, social networking sites on the internet and various other forums, adolescent girls’ pre-marital romantic relationships is a logical corollary. Studies indicate that a significant minority of young men and women had made or received a "proposal" for a romantic relationship (21-23%), and noteworthy, if smaller, percentages reported that they had been involved in a romantic partnership (19% and 9% of young men and women, respectively).  

Not all pre-marital romantic relationships lead to marriage. A study shows that while 64% and 92% of married young men and women who reported a pre-marital romantic partner, respectively, had intended to marry their pre-marital partner, far fewer (23% and 64%, respectively) had done so. Common sense tells us that the objection of the parents / family / relatives is a major contributory factor for such relationships not leading to marriage. Adolescents, particularly girls, have few options in dealing with their romantic relationship in the face of parental objection:

a) they break the relationship and comply with their parents' demand to marry a boy of their choice;

b) they elope with the partner and get married;

c) they commit suicide; or

d) they are killed by the family / community through 'honour killings'.

Honour killings, though related to adolescent girls' and young women's exercise of their agency, are more fully discussed in this publication, in the chapter on violence against girls. Studies point out that India has the world's highest suicide rate for teenagers, and that young women were more likely to commit suicide than young men. A study found that

25 International Institute for Population Sciences (IIPS) and Population Council. 2010, pp. 16-18
26 Ibid, p. 17
27 Dr. Anuradha Bose led a study on suicides among young people in rural South India, which found that the average suicide rate for young women was 148 per 100,000, and for young men 58 per 100,000. Bose, Anuradha et al (2004)
suicide accounted for 50%-75% of all deaths in young women in a population of 108000, and calls for urgent intervention.28 Another study supports this finding and states that suicide attempts are three times greater among teenage girls as compared to teenage boys.29 Researchers state that unfulfilled romantic ideals is one of the contributory factors to the high level of suicides among adolescent girls.30

Another set of statistics indicates the exercise of agency of the girl through elopement. National Crime Records Bureau's statistics of 2011 are revealing: among adolescent girls between the ages of 15 and 18, kidnapping and abduction cases recorded were 10,115 as against a mere 987 for boys of the same age. Hence girls between the ages of 15 and 18 were recorded to have been "kidnapped or abducted" ten times more than boys of the same age group. There was a sharp rise in the recording of this crime from 6422 cases for girls of the same age group in 2010. Please refer to Table 2.3 of this book for the relevant statistics.

The explanation for the high number of incidents of kidnapping / abduction recorded for girls in the age group of 15-18 is that this was the response of agitated parents of adolescent girls who chose to elope with a partner of their choice. Recording the incident as abduction / kidnapping is a legal strategy used / misused by parents / guardians to regain control over their adolescent girls and young women, using the power of law and the state machinery. Mathura's case in the late 1970s, where the brother of a minor tribal girl who eloped with her boyfriend, registered a case of kidnapping, forcing the girl to be brought to the police station, is a strategy that has become the trend at present.31 A 2012 publication of Association for Legal Advocacy and Initiatives (AALI) - a non-profit organisation that intervenes in cases of right to choice in marriage - reveals how the criminal law is often used and misused to deny women the right to choose in relationships and punished perpetrators.32 A quote from a Station House Officer / Superintendent of Police in Narela, Haryana is revealing:

"Many of the cases of reports of missing girls are not kidnappings at all although the FIRs are registered as such; they are cases of elopement, but we have to proceed with the investigations on the basis of the kidnapping charges. When I get a case like this I often know that they are elopements - from the photographs of the girls [sic] it becomes clear that they are involved in love affairs and would have gone on their own. Later when we investigate the case we find clues in the notebooks such as the drawings of hearts and arrows, and names of boys, or code words, and so on... But we have to treat these cases as kidnappings because of social pressure. Also you must understand that the police is not above society; they live in and reflect its values, and they reflect its vibrations..."33

The following are the steps in which the criminal justice system acts in the context of elopement of adolescent girls and young women (while acknowledging that there are likely to be several variations from case to case):

- **STEP A:** Parents (primarily the father) lodges a complaint of kidnapping/abduction, wrongful confinement and often rape, stating that his daughter is a minor; the complaint is made against the boy and his family members. Alternatively a habeus corpus petition is filed against the boy, asking him to produce the girl in court.

- **STEP B:** The couple goes into hiding. Police vigorously search for the 'missing girl', raid every possible hiding

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28 Ibid
29 Mohanroy, G., Ali, Ashraf., and Pillai, K.S.
30 Shaoni Bhattacharya, Shaoni (2004)
31 For facts of Mathura's case, see Takaram vs State of Maharashtra AIR 1979 SC 185
32 Geeta Ramaseshan (2012b)
33 Reproduced from Chakravarti, Uma (2006), p. 318
place, interrogate the girl’s and boy’s friends, and often arrest members of the boy’s family and friends.

- **STEP C:** The couple surfaces due to inability to stay in hiding in the light of the onslaught against loved ones. They risk facing violence or even death. The boy risks facing arrest. When they remain in hiding, they face many challenges - logistical, financial and psychological - and live in a constant fear of being apprehended by the police and the family members, and facing physical violence or death.

- **STEP D:** The boy is arrested; the girl is sent to a state-run narinketan (‘protective’ home) where she is supposed to be safe and inaccessible to the two hostile families. However, in reality, parents of the girl gain access to her and coerce / emotionally blackmail / threaten / intimidate her into repudiating her marriage and falsely alleging that the boy forcibly kidnapped / abducted her.

- **STEP E:** The girl then makes a statement in court recording her choice in the matter. If she withstands coercion by her family members, she will make a statement that she voluntarily had a relationship / married the boy. Where there is clear proof that the girl is a major, her statement, in all probability, will be accepted by the court.

- **STEP F (1st possibility):** If the girl is proved to be a major, and makes a statement in court choosing her partner over her parents, and the judge accepts the statement and rules in her favour, she is free to live with the boy. However, dismissal of charges against the boy and his family members is a long-drawn out legal process. Wrongful arrest and detention of the boy and his family members, and the consequent loss of personal liberty, mental harassment, disruption from education and loss of wages are almost never compensated by the court.

- **STEP F (2nd possibility):** If there is no reliable proof that the girl is a major, and if the girl makes a statement against the boy after succumbing to parental pressure, the girl is ‘returned’ to the custody of the family, which, in all probability, will physically confine and mentally harass her. Legal action is taken against the boy and his family members, including possible prosecution (and conviction) for one or more offences contained in the Indian Penal Code, listed above. The natal family gains de facto control over her.

Proof of age of the girl is crucial as it indicates her capacity to consent to the relationship. Experts point out that even in the case of adult women who are unable to prove their age, they are kept in "protective custody". Moreover, it has been pointed out that the police and the lower judiciary play a significant role through their official capacity, to act as extensions of the father’s authority over the daughter, and through criminal law, they seek to 'retrieve' and return the 'errant' daughter to the 'lawful custody' of the father.

The problem is exacerbated in the case of minor girls, as the offences of kidnapping - which involves enticing of a girl under 18 years from the custody of the lawful guardian - as well as abduction and rape becomes applicable on the face of the case. Being a minor, she cannot consent to sexual intercourse unless it is within the framework of marriage - that is, with the man that her family chooses to be her groom. (Even within a marital relationship, she cannot consent to sexual intercourse if she is below 15 years of age). The narrative below highlights how the judiciary has responded to adolescent, minor girls - in the borderline of ages 16-18 - exercising their agency in marriage.

**D. JUDICIAL RESPONSES TO CHOICE MARRIAGES OF MINOR GIRLS**

By and large, the judiciary has not adopted a rigid approach to elopement marriages of minor girls, and has given due weight to the girls’ wishes if they had attained what the

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34 Ramaseshan, Geeta (2012a)
35 Chakravarti, Uma (2006), p. 317
judiciary considers to be the 'age of discretion' (between 15 and 18 years of age). The concept of ‘age of discretion’ was not innovated by the courts in the context of choice marriages. Though worded differently, the concept has, in fact, existed in the statute books since the 1890s, with regard to guardianship and custody of minors.36

Ravi Kumar versus State37 is an illustrative case on the judiciary’s approach to choice marriages. In this case, the Delhi High Court heard two separate cases involving girls below 18 years who had eloped and married men of their choice, and whose husbands had criminal cases registered against them.

Case 1: Shikha Sharma, aged 16 years eight months, fell in love with 28 year old Ravi Kumar, a vegetable vendor earning between Rs. 5000 and Rs. 6000 a month. They married at an Arya Samaj Mandir in Delhi in December 2004 after showing Shikha’s age to be above 18. They took up a rented house and lived together after marriage. Shikha’s elder sister, Shilpi, the breadwinner of the family, lodged a complaint that her sister was missing, and that she suspected Ravi Kumar of enticing, threatening and kidnapping her. Ravi Kumar was arrested on charges of kidnapping. Shikha was unwilling to return to her parents’ home. Taking into account that Ravi Kumar’s trial would go on, and there was the possibility of Shikha being pressurised, the magistrate directed her to be housed at Nari Niketan. Ravi Kumar was imprisoned, from where he managed to get bail only in April 2005, after Shikha gave a statement saying that the couple were in love and that she had called Ravi Kumar and got married of her own free will.

Ravi Kumar filed a writ petition in the Delhi High Court. Later, Shikha also filed a petition through Ravi Kumar. Under the court’s directions, Shikha was brought from Nari Niketan to court, and Ravi and Shilpi were also present in court. Shilpi stated on oath in court that she now understood that Shikha and Ravi had got married, and that her sister had gone of her own accord and that she (Shilpi) was no longer interested in prosecuting Ravi Kumar.

Case 2: Phoolan Devi lodged a complaint of kidnapping of her daughter Sonia, by her tenants Santosh Rai and Jhandu Rai. Santosh Rai worked as a rickshaw puller. Sonia was over 16 years of age, but under 18. They were arrested. Sonia, who had been in hiding, appeared before the magistrate and gave a statement that she had been coerced into giving an earlier statement to the police that she had been enticed and taken away for sex by Santosh Rai. She admitted that she had married Santosh Rai on July 24, 2005, and had left for his parents’ place in Balia thereafter. The marriage was registered on August 4, 2005. Phoolan Devi asked the court for the custody of her daughter, but Sonia refused to go with her mother. She was sent to Nari Niketan, while Santosh Rai was sent to judicial custody.

The high court directed that Sonia be brought from Nari Niketan, Santosh Rai from jail and be produced in court. It also asked Phoolan Devi to remain present in court. Under oath, Sonia told the court that she and Santosh Rai had known each other for two years, had fallen in love, and had left home as their parents would not approve of their friendship. Sonia stated that it was she, and not Santosh Rai, who had suggested they leave the house and get married. Phoolan Devi submitted that her daughter should live with them at least until she attained majority. But Sonia,

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36 S. 17(3) of The Guardians and Wards Act 1890 states that with regard to guardianship of minors, if the minor is old enough to form an intelligent preference, the court may consider the preference; S. 28 of the Hindu Marriage Act 1956 states that the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible. While adjudicating on custody of children too, courts give due consideration to children’s wishes where the children are old enough to make an intelligent preference. See for example Kirtikumar Maheshanker Joshi vs. Pradip Kumar Karunashanker Joshi (1992) 3 SCC 573

37 124 (2005) Delhi Law Times 1; the judgment is discussed in detail in Shukla, Rakesh (2006)
who incidentally was also pregnant, was determined not to return to her parents. She wanted to live with Santosh Rai and said that she would continue to stay at Nari Niketan until he was released.

The high court formulated four major issues that had arisen in these petitions:

1. Whether, on account of the girl's minor status, the marriage entered into was illegal and void.

2. Whether young girls who got married after having reached the age of discretion, but not yet attained majority, could be sent into protective custody to a remand home against their will.

3. Whether in a writ petition the high court should entertain a prayer for the quashing of criminal proceedings.

4. Whether, in these cases, the high court should quash the FIR and criminal proceedings instituted for kidnapping.

After examining the provisions of the Hindu Marriage Act, the court concluded that marriage of a girl under 18 years of age was neither void nor voidable. It referred to a judgment of the Himachal Pradesh High Court, in Seema Devi & Simran Kaur v. State of HP, which dealt with similar facts and circumstances. The HP High Court held that there was no provision in the law that permitted a direction to be given to detain the minor against her will in a protective home, and that even if the minor is 15 years of age, her wishes should be ascertained before placing her in the custody of any person or institution. The court, in that case, had directed that 15 year old Seema Devi's custody be handed over to her accused husband and not to Nari Niketan. The Delhi High Court also relied upon a judgment of Allahabad High Court in Kalyani Chaudhuri versus State of UP, where it was similarly held that a minor girl could not be detained in a protective home against her will.

The Delhi High Court stated in its judgment that the minor girls could not be directed to be detained in a remand home - Nari Niketan - against their will. It held that in the two cases before it, the girls had reached the age of discretion and had, of their own volition and initiative, accompanied and married men of their choice and wished to live with them. It quashed the FIR and criminal proceedings for the offence of kidnapping against Ravi Kumar and Santosh Rai, in order to prevent further hardship to the two men. In pursuance of its orders, the minor girls were released from Nari Niketan and the men released from jail, in order that the couples could lead a married life.

The above judgment is not an exception. Courts have been called upon, from time to time, to resolve the issue of validity of minor girls' marriages with partners of their choice, and to adjudicate upon the minor girl's exercise of agency as opposed to parents' assertion for control and custody over the girl. The jurisprudence indicates that courts have devised the concept of 'age of discretion' to give recognition to the wishes of the girl if she is between the ages of 15 and 18, thereby bestowing on her an agency. The effort of the courts has clearly been to protect minor girls from the wrath of their parents, prevent the girls' institutionalisation in a state-run home, and at the same time, give consideration to the girls' wishes. In such cases, particularly in habeas corpus proceedings, the court usually verifies the husband's age, employment and background. In addition, it makes an assessment of whether or not the girl's statement expressing her choice was made with her free will, and that she knows the consequences of her exercise of choice. These are

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38. 1998 (2) Crime 168
39. 1978 Cri LJ 1003

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relevant factors that weigh with the court.

In the words of the Delhi High Court, "the preferences of a minor who is old enough to make an intelligent preference ought to be considered by the court. Most importantly, the welfare of the minor is to be the paramount consideration."\(^{41}\)

The possible consequence of returning an unwilling minor girl, who had eloped, married against her parents' wishes, and thereby perceivably brought 'dishonour' to her family, back to parental control and custody, and its probable adverse impact on the girl's life and liberty is a factor that the court seriously considers. In Sh. Jitender Kumar vs. State, the court allowed a 16 year old girl to live with a slightly less than 18 year old boy that she had eloped and married, citing that the girl's welfare would be best served if she lived with her husband.\(^ {42}\)

In a case concerning an elopement of a Muslim girl with a Hindu boy,\(^ {43}\) the Delhi High Court made the following observation:

"There is no law which prohibits a girl under 18 years from falling in love ... Neither falling in love with somebody is an offence under IPC or any other penal law. Desiring to marry her love is also not an offence. However, this (to wait to marry till she is major) is possible only when the house of her parents where she is living has congenial atmosphere and she is allowed to live in peace in that house and wait for attaining age of majority. ... (When the daughter confided in) her father that she was in love and wanted to marry Sanju, the response of the father created a fear in the mind of (the girl). Her father slapped her and told her that her action would malign the family and bring danger to the religion. He even threatened to kill her or marry her off to some rich person. When once such a threat is given to a girl around 17 years of age, who is in love, she has a right to protect her person and feelings against such onslaught of her relatives even if the onslaught is from her own parents. Right to life and liberty as guaranteed by the Constitution is equally available to minors. A father has no right to forcibly marry off his daughter, against her wishes. Neither has he the right to kill her because she intends to marry out of her religion. If a girl around 17 years of age runs away from her parents' house to save herself from the onslaught of her father and joins her lover, it is no offence either on the part of the girl or on the part of the boy with whom she ran away and married."

A 2012 judgment of the Delhi High Court, which allowed a nearly 16 year old Muslim girl who eloped, married and wished to live with her husband, against her parents' consent, to do so, evoked strong responses from civil society.\(^ {44}\) Some Muslim women's groups condemned the judgment, called for a codification of Muslim law, and fixing the minimum age of marriage for girls at 18, with an underlying presumption that all under-aged marriages should be declared as void.\(^ {45}\) Some feminists questioned why "personal laws" and religious considerations determine the public space inhabited by women and girls, instead of fundamental rights guaranteed by the Indian Constitution.\(^ {46}\) Other feminists have supported the judgment as recognizing

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\(^ {41}\) Sh. Jitender Kumar vs. State 2010 INDLAW DEL 1904 - Delhi High Court judgment delivered on 11 August 2010 in WP (CRL) 1003/2010

\(^ {42}\) Ibid

\(^ {43}\) Vivek Kumar @Sanju and Anjali @ Afsanavvs the State (Crl.M.C.No. 3073-74/2006, decided on 23.02.2007) (as cited in TahraBehum's case below)

\(^ {44}\) Mrs.Tahra Begum vs State of Delhi and Ors, judgment of the Delhi High Court dated 9 May 2012, in W.P. (CRL) 448/2012, Crl. M.A. 3701/2012


\(^ {46}\) See Jaising, Indira (2012)
the agency of minor girls who had reached the 'age of discretion' in choosing their marriage partners as against parental control.\(^\text{47}\) It has been further opined that the solution does not lie in preventing child marriages through the law, but in being sensitive to the multiple levels of vulnerabilities that teenage girls who elope with their boyfriends face, and in providing more options for education and skill training of girls in order to delay their marriages.\(^\text{48}\)

There have been stray judgments that have gone against this trend, and treated choice marriages with contempt, giving more consideration to parental control and feelings than young couples' interests, wishes and rights. For example the Rajasthan High Court branded all choice marriages as "tools for pacification of greed and lust", and opines that "once it is over, the marriage lands in courts resulting in irretrievable breakdowns."\(^\text{49}\)

The judgment, passed in October 2011, has tried to curtail all choice marriages (not only those of minors) by emphasizing that parental consent is a necessary component for solemnisation of Arya Samaj marriages.\(^\text{50}\) The bench passed the order on a habeas corpus petition filed by 34 year old Buddha Ram Meena, whose 18 year old wife Maina Bhatt was forcibly taken away by her parents after the couple married at an Arya Samaj centre. The highlights of the High Court judgment are as follows:\(^\text{51}\)

- An Arya Samaj marriage will be solemnized only after it is approved and recommended by two distinguished persons each from both the partners' families.
- After the approval, the partners will have to present three prominent persons from both sides as witnesses to the marriage in case the parents object.
- A notice of the intended marriage with the name of the boy and the girl has to be prominently displayed on a notice board at the district collectorate, local police station and the Arya Samaj office.
- A copy of the notice will have to be sent by registered post to the parents of the couple, the bench said.
- At least six days' time be given to the parents to take a conscious decision on a "love marriage".
- In case Arya Samaj authorities decide to go ahead with the ceremony despite objections of the parents, they will have to separately record the reasons for entering into such a marriage.

In a state known for 'honour crimes' against girls and women, the judgment further strengthens state institutions and non-state actors to indulge in moral policing, and harass young couples opting to marry a partner of their choice. It is disappointing that the court goes against the spirit of what most courts have done - uphold the fundamental rights of young people and protect them from the wrath of their family and society for transgressing social norms. In effect, the Rajasthan High Court judgment strikes a death knell at choice marriages of all young persons - minors and majors.

In another judgment related to an adolescent minor girl's choice marriage, the Karnataka High Court observed:

"We have seen many cases of run away love marriages and untold misery and hardship of the parents of the girls. All the love marriages are not successful. In the event of failure of the love marriage of the girl, it is the girl's parents and the
girl who have to suffer for their life long. The girls, later on realise their mistake that they were hasty in love marriage and repent at leisure."

The Madras High Court, through a Full Bench judgment in 2011, referred to the Karnataka High Court judgment but gave another line of reasoning for refusing to allow a minor girl to live with her husband against her parents' wishes. In this case, the court was called upon to determine if the custody of the minor girl can be given to her husband, and whether the 17 year old girl can be said to have reached the age of discretion and thereby walk away from the lawful guardianship of her parents and refuse to go to their custody. The observations it made / principles it laid down, limited to Hindu marriages, are as follows:

- Since the girl was a minor at the time of the marriage, S. 3 of the Prohibition of Child Marriage Act 2006 would apply, making it a voidable marriage. In voidable marriages, the victim of the voidable marriage would have all rights flowing from a valid marriage, while the male spouse would have only limited rights but all legal liabilities towards the girl.

- An adult male who marries a female child in violation of S. 3 of the Prohibition of Child Marriage Act has committed an offence under the Act and thus, cannot become the natural guardian of the female child. The male contracting party of a child marriage is not to be entitled for the custody of the female child whose marriage has been contracted by him even if the female child expresses her desire to go to his custody. However, as an interested person in the welfare of the minor girl, he may apply to the court to set her at liberty if she is illegally detained by anybody.

- If the minor girl expresses her wish not to go with her parents, the court may direct such female child be kept in a separate home for children in need of care and protection established under the Juvenile Justice (Care and Protection) Act and not in a special home or observation home meant for juveniles in conflict with law.

- On the 'age of discretion' issue, the court observed that a "minor cannot walk away to her whims and fancies from the lawful guardianship of her parents". It said that whether or not a minor girl has reached the age of discretion is a question of fact which the court has to decide based on the facts and circumstances of each case. By brushing aside the girl's wishes, implicitly, in the court's opinion, the girl had not reached the age of discretion. The court failed to spell out reasons for thinking so.

A reading of the judgment indicates that the court was preoccupied with eradication of the 'evil menace' of child marriages, and treated marriage of a 10 year old and a choice marriage of a 16-18 year old on the same footing, as all were child marriages. It observes that it has "come across reports that minor boys and girls induced by infatuation elope, resulting in a number of habeas corpus petition filed by parents." It is a matter of concern that the court calls upon the police to register criminal cases against the offenders in order to reduce incidents of child marriages! The court was blind to the dangerous inter-play of matrimonial laws and criminal law in the context of choice marriages of young people. The judgment is bound to make adolescent girls and their marriage of choice more vulnerable, by strengthening the hands of the patriarchal family through the criminal law machinery.

While the police may register a complaint for the offence of kidnapping against the boy and cause harassment to him

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52 Avinash Singh vs. State of Karnataka and Others CDJ 2011 KAR. HC 373
54 Ibid at para 24
56 Ibid at para 34
58 Ibid at para 57 (iii)
57 Ibid at para 51
58 Ibid at para 50
and his family members, the offence may not actually be made out in a court of law. In *S Varadarajan vs State of Madras* the court explained that 'enticing away a minor out of the keeping of a lawful guardian' is an essential ingredient of the offence of kidnapping. It further observed:

"But when the girl (who though a minor had attained the age of discretion and is on the verge of attaining majority and is a senior college student) from the house of the relative of the father where she is kept, herself telephones the accused to meet her at a certain place, and goes there to meet him and finding him waiting with his car gets into that car of her own accord, and the accused takes her to various places and ultimately to the Sub-Registrar's Office where they get an agreement to marry registered, and there is no suggestion that this was done by force or blandishment or anything like that on the part of the accused but it is clear from the evidence that the insistence of marriage came from her side, the accused by complying with her wishes can by no stretch of imagination be said to have "taken" her out of the keeping of her lawful guardianship, that is, the father.

The fact of her accompanying the accused all along is quite consistent with her own desire to be the wife of the accused in which the desire of accompanying him wherever he went is of course implicit. Under these circumstances, no inference can be drawn that the accused is guilty of taking away the girl out of the keeping of her father. She has willingly accompanied him and the law does not cast upon him the duty of taking her back to her father's house or even of telling her not to accompany him."\(^60\)

In *Ravi Kumar vs. State*, the Delhi High Court relied upon this judgment, and noted the distinction between "taking away" and allowing a minor to accompany a person. Applying the principle in *S Varadarajan's* case to the two cases before it, the court concluded that there was no taking or enticing away, and that the essential ingredients of the offence of kidnapping were missing in these cases, since the girls, having reached the age of discretion, had, of their own volition, accompanied the men of their choice.\(^52\)

These judgments are progressive, as they decriminalise the right to choice with reference to the offence of kidnapping from lawful guardianship, where the evidence showed that the girl was able to make a calculated and clear judgement. The Supreme Court judgment in *S Varadarajan's* case is a binding and useful precedent to activists and lawyers to quash proceedings for the offence of kidnapping, particularly when an allegation of kidnapping is made by the girl's parents in contexts of choice marriage of the girl against their wishes.

E. RESPONSE OF OTHER INSTITUTIONS TO CHOICE MARRIAGES

The National Commission for Women (NCW) in its report in 1995-96 had recommended that child marriages be declared void. It had further recommended that there should be compulsory registration of marriages and emphasized on free and compulsory education till the age of 14. The Commission felt that all these steps could play an important part in checking child marriages.\(^63\)

In 2006, the NCW made another initiative in this regard. Along with the Delhi State Commission for Women, it filed a writ petition before the Supreme Court, recommending that the legal minimum age for all marriages should be 18 years, and that all marriages of parties below 18 years of age should be void.\(^64\) The reason given for considering below-

\(^{59}\) AIR 1965 SC 942

\(^{60}\) Ibid

\(^{62}\) Ibid at para 20

\(^{63}\) See Law Commission of India (2008), p. 38

\(^{64}\) Writ Petition (Criminal) No. 81 of 2006
18 marriages to be void is that a child marriage is usually a forced marriage, and no full and informed consent can be given by a person under the age of 18. The Supreme Court requested the Law Commission of India to assist it with issues raised in the writ petition.

The Law Commission of India, in its 205th report, recommended, inter alia, that all marriages where either party was below the age of 16 should be rendered void, and that marriages of minors between the ages of 16 to 18 should be made voidable at the option of the child. In its wisdom, it did not recommend a blanket provision invalidating all under-18 marriages. It also recommended that the exception to rape under S. 375 of the IPC be deleted, to ensure that the age of consent for sexual intercourse for all girls, whether married or not, is 16. A further recommendation was that the age of marriage for both boys and girls should be 18 years as there is no scientific reason why this should be different.

As pointed out by feminist lawyers, policies on marriage are also contradictory and confusing. For example the Rajasthan state enactment - Compulsory Registration of Marriages 2009 - requires consent of the parents for registration of the marriage, if the girl is below 21 years of age. Thus she may legally marry at 18, but would have to wait till 21 in order to register her marriage. The provision is an attempt to discourage / curb inter-caste / inter-religious marriages, and give the parents an opportunity to object to the same, and perhaps even 'save' their daughter from the marriage before it is made legal through registration. Other state enactments on compulsory registration of marriages, as well as rules framed under such laws, would have to be studied to enquire if there are similar or other ways devised by state governments to strengthen parental authority and curb choice marriages of young persons.

**F. POLICIES, PROGRAMMES & SCHEMES ADDRESSING EARLY MARRIAGES OF ADOLESCENT GIRLS**

Policies and programmes in India have increasingly recognised that adolescents, particularly girls, are a vulnerable group with special needs, including in the area of sexual and reproductive health. One focus area in these programmes is empowering girls to express their opinion and to participate in decisions affecting their lives including when and whom they will marry. There are various national level policies that have been formulated since 2000, which specially focus on delaying age at marriage. These include the National Population Policy 2000, the National Youth Policy 2003 and the National Adolescent Reproductive and Sexual Health Strategy.

Good practices by both government and non-governmental organisations that aim to address the vulnerability of girls particularly against child marriages include non-formal education, the development of livelihood skills, raising awareness of sexual and reproductive health issues, youth-friendly reproductive health services, and life skills education. The central government has launched Balika Samridhi Yojna - a cash transfers scheme for delayed marriage - which is payable to unmarried 18 year old girls. This was inspired by the Haryana government's scheme titled Apni Beti, Apna Dhan. The Government of Rajasthan has reportedly taken a special initiative to delay marriage by coordinated effort to stop child marriage on Akha Teej - the traditional day for such marriages-through police action and awareness campaigns. Such campaigns have involved the district administration and police, as well as various departments such as those related to women and child  

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65 *Supra n. 63 at pp. 44-45*
66 *Ibid*
67 *Ibid at p. 45*
68 *Discussed in further detail in Jaising, Indira (2012)*
development and education.

The Ministry of Women & Child Development, Government of India has been implementing Dhanalakshmi, a Scheme for conditional cash transfer for the girl child. The scheme provides for cash transfer to the family of a girl child on fulfilling certain conditions pertaining to registration of birth, immunization, enrolment and retention in school till class VIII; and an insurance coverage if the girl remains unmarried till the age of 18. The aim of the scheme has been to motivate the families to look upon the girl child as an asset rather than a liability, by allowing cash inflow to the family. Among many other cash transfer schemes, this is the only one which is fully supported by the Government of India and is implemented as a pilot project in eleven backward blocks from seven states. The Bhagyalakshmi scheme in Karnataka, the Ladli Lakshmi scheme and Mukhya Mantri Kanyadan Yojana in Madhya Pradesh, the Ladli scheme in Haryana and Delhi, Beti Hai Anmol scheme in Himachal Pradesh are other conditional cash transfer schemes in existence, which prescribe an eligibility criteria of ‘18 years or above and unmarried’ for availing their benefits.71

Among the efforts of many non-profit organisations working on delaying the age of marriage of girls, some reported success stories are as follows: The International Center for Research on Women (ICRW) launched a programme called Development Initiative for Supporting Healthy Adolescents (DISHA) during 2004-07. The programme’s reported outcomes include (1) Increased age at marriage for girls from 15.9 years to 17.9 years; (2) Increase in knowledge of legal age of marriage from 25.6% of adults to 56.6%; and (3) Increase in age 18 or older as ‘ideal age’ of marriage articulated by girls from 60.2% to 86.6%.72 Similarly the life skills programme to increase the age of marriage of girls, implemented by the Institute of Health Management-Pachod (IHMP) & ICRW in selected villages of Maharashtra in 1997-2005, was successful in increasing the median age for marriage by one year.73

The findings of a study by IIPS and Population Council indicate that although most youth prefer to marry after age 18, the practice of early marriage is widespread among young women.74 These findings call for measures that go beyond information campaigns to address the underlying factors-social norms and economic constraints-driving early marriage in the country. The report reiterates a need for a multi-pronged approach to eliminate the practice of early marriage. These include strategies that mobilise communities to help parents resist pressures that foster the practice of early marriage, and strategies for establishing new norms and practices, that actively engage influential persons in the community, highlighting the adverse consequences of early marriage. The report also recommends that strategies for community mobilisation must involve youth themselves as well as their families. If further highlighted the fact that efforts to delay marriage also require providing girls with viable alternatives to marriage in the form of accessible and quality schooling and opportunities to build and use livelihood skills, and to provide livelihoods training within and outside the education system.75

G. NEED FOR A MULTI-PRONGED RESPONSE

There are many complex situations related to issues of age of marriage and agency in marriages of adolescent girls. As discussed in this chapter, there are situations where the offence of kidnapping against lawful guardianship, rape and other provisions of criminal law are used as a tool to harass, punish and seek revenge in choice marriages that transgress

71 For more details of various conditional cash transfer schemes, and an analysis of their implementation, usefulness and limitations, see Sekher, T.V. (2012)
72 For more details, see Khan, Naseem Ahmed and Mishra, Gyanendra
73 Ibid
74 International Institute for Population Sciences (IIPS) and Population Council, 2010, p. 16-18
75 Ibid
social norms. The might of the state is used, through such criminal law provisions, to harass, intimidate, coerce and compel even adult women to retract from their choice of marriage. The situation of very young girls being forcibly married by their parents when they are not physically and mentally ready for marriage and its responsibilities is equally a reality. Adolescent girls and young women are also sold, trafficked and married off through sham marriages, sometimes with the complicity of the police. While efforts are under way to tackle young girls from being married, to the contrary, Haryana's khap panchayats are reportedly recommending lowering the age of marriage of girls, so that girls can be married off early as a means to check rape.

A complex situation warrants a nuanced and multi-pronged response from the government. The Law Commission of India's recommendations of making all marriages below 16 void (irrespective of religion), and making marriages between the ages of 16 and 18 voidable is a more viable option than the NCW's proposal of a blanket invalidation on all under-18 marriages. In addition, rape within marriage should be outlawed for all ages, and provisions related to kidnapping ought to be amended to address its misuse by parents who are against inter-caste / class / religious marriage of their daughter / son. In addition, law has its limitation and legal provisions alone would not result in increasing the age of marriage of girls. Policies, programmes and schemes addressing early marriages of adolescent girls, through other strategies, play a significant role. Conditional cash transfer schemes, life skills education and livelihood skill-building are some such initiatives that hold great promise in delaying the age of marriage of adolescent girls, while at the same time, empowering them to make responsible choices in life and exercising their agency.

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Pratiksha Baxi discusses this in detail in her article - Baxi, Pratiksha (2006), pp. 59-78

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Chapter 8
Violence Against Girls

*Girls' lives are often conditioned around the possibility of violence. And acts of violence exert additional power over girls because the stigma of violence often attaches more to a girl than to her perpetrator.*
- Judith Bruce

Violence against girls constitutes an aspect of gender-based violence. The term gender-based violence (GBV) is used to distinguish violence that which targets individuals or groups of individuals on the basis of their gender from other forms of violence by individuals and groups. It includes acts that result in, or is likely to result in, physical, sexual or psychological harm. A threat of such acts, coercion and arbitrary deprivation of liberty are also forms of gender-based violence. Such gender-based violence might occur within the family, in the community during "peace times" or times of conflict, or by state agents. It may be perpetuated by family members, acquaintances, strangers or intimate partners.

While violence is a traumatic experience for anyone, gender-based violence is predominantly inflicted by men on women and girls by reason of their gender. In the context of adolescent girls, it adversely affects their dignity, physical integrity, security, sexuality, reproductive capacity and their right to control over their own body (autonomy), apart from its over-arching impact on their physical and mental health. Gender-based violence stems from the power inequality between men and women, aggravated by socio-economic, cultural and structural inequalities. Additionally, when inflicted on adolescent girls, such violence also targets their age-related vulnerability and asserts the age-related superiority of the perpetrator(s). Gender-based violence on adolescent girls is situated within the institutions of patriarchy, and the notions it perpetrates, such as the concepts of masculinity and femininity.

While acknowledging diverse forms and aspects of violence against girls, and laws pertaining to the same, this chapter seeks to discuss specific forms of violence that are disproportionately perpetrated on adolescent girls, such as trafficking, acid attacks and 'honour crimes'. It will further outline the law and policy framework on violence against girls, and highlight critical aspects of their implementation.

A. VIOLENCE AGAINST GIRLS: CATEGORIES OF OFFENCES

Similar to violence against women, violence against girls takes many different forms, manifested in a continuum of multiple, inter-related and sometimes recurring forms. The Declaration on the Elimination of Violence against Women and the Beijing Platform for Action address violence against women according to the site, or setting, where it occurs: in the family; within the general community; and perpetrated or condoned by the State. It is important to remember that these are not water-tight compartments, as many forms of violence against girls occur in multiple settings: for example, violence against girls as a result of moral policing involve both the family and the community and are often condoned by the State. Trafficking is a form of violence against girls.

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1 Bruce, Judith (2011), p. 2
that involves family, community and State and crosses state, national and international boundaries. Different forms of violence against girls may be linked to, or reinforce each other.

Contrary to the belief that family is the safest place for an adolescent girl, the family can be a site of violence against girls. Such violence constitutes a part of the violence against women throughout their life cycle. Violence in the family is also perpetrated by intimate partners - it includes a range of sexually, psychologically and physically coercive acts used against adult and adolescent women by a current or former intimate partner, without her consent. Violence against girls in the community include physical, sexual and psychological violence, perpetrated during interactions in their neighbourhoods, on public transport, in workplaces, schools, colleges and other public places, in hospitals and in other institutions. In addition to the family and community, the state (through laws and policies) and its agents may also perpetrate violence against girls, or condone such violence, resulting in grave dereliction of their duties mandated by law. State agents include all public officials working in the executive, legislative and judicial branches of the state. Direct perpetration of violence on girls by state agents may happen in contexts of armed conflict, militarisation and in government-run institutions such as hospitals and juvenile homes. A state may also condone violence against girls through inadequate laws or through ineffective implementation of laws, such as when the state agents fail to take prompt action to stop the crimes or to investigate the crimes subsequent to their occurrence. Such acts effectively allow perpetrators of violence against women impunity for their acts. Diagram 8A below illustrates various forms of violence against girls, falling into the broad categories of violence by family, community and that perpetrated / condoned by the state.

Diagram 8a: Violence Against Girls: Categories Of Offences

B. INTERNATIONAL STANDARDS

At the commencement of the UN Decade for Women (1975-1985) violence against women and girls was not even an issue. While the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) did not explicitly mention violence against women, the CEDAW Committee, in explaining and expanding the scope of the provisions of CEDAW, concluded that definition of discrimination against women includes gender-based violence, and that 'such violence may violate specific provisions of the Convention regardless of whether violence is mentioned in those provisions.' The Committee defined gender-based violence as 'violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.' This imposes an obligation on the state to acknowledge the existence of gender-based violence, formulate laws and policies to

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5 General Recommendation No. 19 (Eleventh Session, 1992)
address, prevent and redress the same, and make institutional arrangements for implementation of the same. The provisions of CEDAW and their interpretations apply equally to women and girls of all ages.

In the subsequent year, the Vienna World Conference on Human Rights 1993 explicitly recognised, for the first time, that the rights of women and girls were an inalienable and integral part of human rights, under massive pressure from the women's movement. The slogan 'women's rights are human rights' was coined for the first time. This is a clear departure from cultural relativism, which was, till then, advanced as an excuse for traditional discriminatory and unhealthy practices including violence against women and girls.

Subsequent to the Vienna Conference, the General Assembly of the United Nations adopted the Declaration on the Elimination of Violence against Women (DEVAW) (1993). DEVAW is the first international instrument to express international political consensus that states have human rights obligations to prevent gender-based violence and to redress the harm caused. The Preamble to DEVAW states that the Declaration would 'strengthen and complement' the process of effective implementation of CEDAW. It recognized violence against women as 'a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women.' It states that violence as 'one of the crucial social mechanisms by which women are forced into a subordinate position'. DEVAW adopts the three categories of violence against women outlined above. It specifically prohibits states from invoking any 'custom, tradition or religious consideration to avoid their obligations with respect to' elimination of violence. DEVAW makes specific reference to violence in the public and private domains, and has contributed to making violence against women and girls an issue of public concern.

Article 4 of the Declaration states:

"States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women..."

In 1994 the United Nations appointed a Special Rapporteur on Violence against Women attached to the Office of the High Commissioner for Human Rights, with the mandate of issuing recommendations for eliminating violence against women and girls. The reports brought out by successive U.N. Special Rapporteurs on Violence Against Women, its Causes and Consequences (SRVAW) have broadened the understanding of violence against women. The UN Special Rapporteur has identified the root causes of violence against women and categorised forms of violence into a) violence in the family; b) violence in the community; and c) violence perpetrated / condoned by the state. These categories have been discussed in this chapter, in the section above.

The Vienna Declaration and Programme of Action 1993 also emphasized the importance of working towards the elimination of violence against women in public and private life, and the eradication of any conflicts that may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism. The Beijing Platform for Action identified 12 critical areas of concern, which included violence against women in armed conflict, such as systematic rape and forced pregnancy, sexual slavery, forced sterilization and forced abortion. This was an area that was not specifically mentioned in DEVAW. The outcome document

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6 Bunch, Charlotte (1995)
7 Article 4 of the UN Declaration on Elimination of Violence Against Women, 1993

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* Para 38 of the Vienna Declaration and Programme of Action, UN Doc A/CONF. 157,23
of the special session on Beijing +5 further elaborated the framework and standards of violence against women, by calling for the criminalization of violence against women. The Statute of the International Criminal Court, that entered into force in July 2002, spells out rape, forced pregnancy, enforced prostitution, sexual slavery, forced sterilization and other forms of sexual violence as war crimes and crimes against humanity. Although India has not ratified this Statute, the international standards and norms created by this Statute, particularly on violence against women and girls, are relevant to domestic law reform initiatives within the country, and have been advocated by the ICC-India campaign.

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children entered into force at the end of 2003, providing a key supplement to the Convention on Transnational Organized Crime. Trafficking has been viewed as a contemporary form of slavery that involves a variety of acts, actors, means and exploitative purposes. Hence, the Protocol contains provisions that are intended to ensure that trafficked persons are not treated as criminals but as victims of crime and are entitled to protection of their human rights. In 2004, the United Nations appointed a Special Rapporteur on trafficking in persons (SRTIP), with a particular responsibility for addressing trafficking issues concerning women and children, in order to uphold and protect the rights of trafficked people.

Adolescent girls are included in both the categories - women and children.

In addition to the declarations, conventions and treaties that set standards on addressing violence against women and girls, international law has also developed the concept of 'due diligence'. The concept has been used as a key principle to hold states legally accountable for prevention, investigation, punishment and providing reparations for violations directly committed by state or its agents. In addition, violations by non-state actors and those violations that occur on account of state failure to take sufficient steps to prevent the illegal acts from occurring are also covered under this concept. The due diligence standard has existed in international law, and was not introduced by CEDAW, the CEDAW committee or SRVAW. However, the committee incorporated the concept in General Recommendation 19 of CEDAW, in order to clarify and strengthen state obligation for violence against women, particularly by non-state/private actors in the public and private spheres. The CEDAW committee states: "It is emphasized, however, that discrimination under the Convention is not restricted to action by or on behalf of Governments...States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation." Essentially, the concept of due diligence has been used by the CEDAW committee to bring violence against women from the private to the public domain. However, it is also a yardstick to measure the extent to which the state has discharged each level of responsibilities set out...

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9 Para 69(c) of the outcome document calls upon the states to treat "all forms of violence against women and girls of all ages as a criminal offence punishable by law, including violence based on all forms of discrimination." A/RES/S-23/3

10 See Art. 7(1)(g) of the Rome Statute of the International Criminal Court for definitions of various forms of sexual and gender-based violence as crimes against humanity. See also Bedont, Barbara & Martinez, Katherine Hall (1999), pp. 65-85

11 ICC-India is the Indian campaign on International Criminal Court - an anti-impeunity campaign working on mass crimes and international law. For more details of the campaign, see www.wragindia.org/campa_icc.htm

12 The concept was applied in the landmark judgment of the Inter-American Court of Human Rights in Velásquez Rodríguez vs. Honduras, 29 July 1988, Series C: Decisions and Judgments, No. 04. The case dealt with the arrest without warrant, illegal detention, harsh interrogation and torture and the subsequent 'disappearance' of Rodríguez by public officials.

13 CEDAW Committee's General Recommendation No. 19 on Violence Against Women, Eleventh Session No. 1, 1992, UN Doc. A/47/38, at para 9
by CEDAW. This aspect is discussed in further detail in Chapter 10 of this book.

As is obvious from the discussion above, the provisions of CEDAW, the jurisprudence developed by the CEDAW Committee, the provisions of the UN Declaration on Elimination Against Women as well as the reports brought out by the UN Special Rapporteur on Violence Against Women complement each other, and together with other initiatives that set standards and norms, constitute the international human rights framework within which violence against girls is understood and addressed.

C. THE INDIAN LEGAL FRAMEWORK

The Indian Penal Code (IPC) is the primary law that defines and declares specific acts as offences, and provides for punishment for the same. Provisions under the IPC related to violence against girls are summarized in Table 8.1 below. In addition to the Indian Penal Code, laws have also been enacted on specific issues. Sexual assault against girls falls under various provisions of criminal law, including rape, attempt to rape and molestation in common parlance, termed in legal language as 'rape', 'attempt to rape', 'outrage of modesty', 'insult to modesty', 'unnatural offences' and sexual offences within marriage. The acts of violence, sexual or otherwise, may also attract other provisions of the Indian Penal Code such as murder, culpable homicide, abetment to suicide, dowry death, kidnapping, abduction, causing hurt, causing grievous hurt, wrongful restraint and wrongful confinement. Against the backdrop of a high incidence of early marriages of girls and domestic violence, the provisions of the Protection of Women from Domestic Violence Act 2005 would be particularly useful. Though there is no specific provision in any statute that directly deals with pornography, it has been brought within the provision of obscenity in S. 292 of the Indian Penal Code, 1860, imposing criminal liability for sale, distribution etc. of obscene material. Pornography has also been prohibited under the Information Technology Act, 200014 and the Indecent Representation of Women (Prohibition) Act 1986. Acid attacks are most often targeted at adolescent girls and young women. There is no specific law on this issue; various provisions of the Indian Penal Code apply. This crime is discussed in detail in sub-section F below. Trafficking is a heinous crime, that disproportionately affects adolescent girls. An evaluation of the Indian law - The Immoral Traffic Prevention Act - against the yardstick of international standards - is discussed in detail in sub-section E below.

Among the community-sanctioned crimes, communal violence, sati, witch-hunting and 'honour crimes' are significant. 'Honour crimes' have been discussed in detail below in sub-section G. The Sati Prevention Act is a legislation that outlaws the practice of sati - the burning or burying alive of widows with the bodies of the deceased husband or other relatives, and makes it illegal to abet, glorify or attempt to commit sati. This law came to be enacted in 1987 after the murder of Roop Kanwar, a 17 year old girl, on the funeral pyre of her husband. State legislations exist on the issue of witch hunting in the states of Bihar, Jharkhand and Chhattisgarh.16 While there has been some move made by the Ministry of Women and Child towards a national law on witch hunting, given the low rate of convictions under state laws, it would be wise to introspect

14 S. 67 of the Information Technology Act 2000 states: Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees.

TABLE 8.1: SUMMARY OF PROVISIONS IN THE INDIAN PENAL CODE (IPC) RELATED TO VIOLENCE AGAINST GIRLS

<table>
<thead>
<tr>
<th>Category</th>
<th>IPC Section</th>
<th>Act</th>
<th>Punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Causing Death</td>
<td>299-293</td>
<td>Selling, distributing, publishing, or circulating obscene material</td>
<td>3 years or fine</td>
</tr>
<tr>
<td></td>
<td>300</td>
<td>which causes death, and is done with the intention to cause death.</td>
<td>Death 1 the imprisonment + fine</td>
</tr>
<tr>
<td></td>
<td>304A</td>
<td>Causing death by a mad or negligent act (that act must be due to the direct cause of death. Intention to cause death is not required)</td>
<td>Up to 2 years imprisonment + fine or both</td>
</tr>
<tr>
<td></td>
<td>394 - 5</td>
<td>Drunken death</td>
<td>Not less than seven years</td>
</tr>
<tr>
<td></td>
<td>398</td>
<td>Abetment of commission of suicide of a person under 18 years of age.</td>
<td>judicial / imprisonment + fine 10 years imprisonment + fine</td>
</tr>
<tr>
<td>Wrongful restraint</td>
<td>341</td>
<td>Wrongful restraint - is the prevention of a person from proceeding in which that person is entitled to proceed.</td>
<td>Up to 1 month imprisonment and / or fine</td>
</tr>
<tr>
<td></td>
<td>341 &amp; 342</td>
<td>Wrongful confinement - is the prevention of a person from proceeding beyond certain limits. Kidnapping from lawful guardianship - is the enacting of a male under 18 years of age, or a female under 18 years of age, or a person of unsound mind from custody of a lawful guardian without consent of guardian.</td>
<td>Up to 1 year imprisonment and / or fine 3 years imprisonment and 1 year</td>
</tr>
<tr>
<td>Kidnapping &amp; abduction</td>
<td>361</td>
<td>Abduction - is the compelling or inducing of a person by force or deceit to go from any place.</td>
<td>Up to 10 years imprisonment and fine</td>
</tr>
<tr>
<td></td>
<td>362A</td>
<td>Kidnapping - is obtaining or removing a minor by force or deceit for the purpose of marriage, reduction to slavery, etc.</td>
<td>Up to 10 years imprisonment and fine</td>
</tr>
<tr>
<td></td>
<td>366</td>
<td>Inducing of a minor girl under 18 years of age to do any act that may force or seduce her to illicit intercourse with another person.</td>
<td>Up to 10 years imprisonment and fine</td>
</tr>
<tr>
<td></td>
<td>366A</td>
<td>Importation of girl under 21 years of age into India from a country outside India or from Jammu and Kashmir with the intent that she may be forced or seduced to illicit intercourse with another person.</td>
<td>Up to 10 years imprisonment and fine</td>
</tr>
</tbody>
</table>

(Cont'd. on page 226)
<table>
<thead>
<tr>
<th>Category</th>
<th>IPC Section</th>
<th>Act</th>
<th>Punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sexual Assault</td>
<td>372</td>
<td>Selling or hiring a person under 18 years of age for purpose of prostitution or illicit intercourse with any person, or for any unlawful or immoral purpose</td>
<td>Up to 10 years imprisonment and fine</td>
</tr>
<tr>
<td></td>
<td>373</td>
<td>Buying or hiring a person under 18 years of age for purpose of prostitution or illicit intercourse with any person, or for any unlawful or immoral purpose</td>
<td>Up to 10 years imprisonment and fine</td>
</tr>
<tr>
<td></td>
<td>374</td>
<td>Unlawfully compelling a person to labour against his will or unlawful intercourse with a woman</td>
<td>Up to 1 year imprisonment or fine at the discretion of the court</td>
</tr>
<tr>
<td>375</td>
<td>Rape</td>
<td>Not less than seven years</td>
<td></td>
</tr>
</tbody>
</table>

375C Sexual intercourse not amounting to rape committed by Superintendent or manager of a hospital or other place of custody established under law or children's institution, or rape committed upon a woman under 16 years of age, if it amounts to rape as committed by a woman under 16 years of age |

377 Unnatural offences—Voluntarily having sexual intercourse with another of the same sex, or with an animal (the section applies only to forms of sexual assault against girls, not covered under the definition of rape. Any oral or anal penetration is necessary to establish the offence) |

376 read with 511 Attempt to rape |

| Offences within Marriage | 389 | Wasting, punishing or ill-treating or ill-treating in any manner or in any way causing the death of a woman |
| | 403 | Cohabitation caused by voluntarily inducing woman to believe herself to be legally married |
| 404 | Going through unlawful marriage ceremony |
| 406 | Forging, obtaining a woman with a criminal intention |
| 391A | Indecent assault on women |
| 391B | Abetment to suicide |


To live and work in exploitative or servile conditions, and forced marriage, are the cornerstone of trafficking in girls. The most disadvantaged social economic state and those from India's most disadvantaged social economic status are particularly vulnerable to forced or bonded labour and sex trafficking. A violation of human rights. Every year, thousands of girls are bought and sold and forced into prostitution and human trafficking. In the South Asian region for victims of trafficking. The Ministry of Women and Child Development of India have been victims of trafficking. In 2007, that three million women in India become victims of trafficking and those from India's most disadvantaged social economic state are particularly vulnerable to forced or bonded labour and sex trafficking.
Definitions
There is no uniformly accepted definition of trafficking though various international bodies have passed resolutions on trafficking. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2000 (hereinafter referred to as the Protocol) has a broad definition of trafficking:

The common elements found in most definitions of trafficking are as follows:

<table>
<thead>
<tr>
<th>Physical or psychological coercion/lack of consent</th>
<th>The Protocol states that the consent of a victim of trafficking in persons to the intended exploitation … shall be irrelevant.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transport / movement</td>
<td>Its gamut includes recruitment, transportation, transfer, harbouring and receipt of persons;</td>
</tr>
<tr>
<td>Exploitative conditions of the work / relationship</td>
<td>This includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;</td>
</tr>
<tr>
<td>Not limited to commercial sexual exploitation</td>
<td>The Protocol specially mentions other purposes for trafficking such as forced labour, and recognizes the existence of voluntary and forced prostitution, and indicates a consensus among states that involuntary forced participation in prostitution would constitute trafficking.</td>
</tr>
</tbody>
</table>

While the various definitional aspects highlight the manifestations / tangible process of trafficking, trafficking essentially involves a continuum of violations.

Narrow Definition in the SAARC Convention: SAARC Convention On Preventing And Combating Trafficking In Women And Children For Prostitution 2002 also defines trafficking. The Convention, to which India is a party, defines trafficking more narrowly, and states as follows:

"Trafficking" means the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking;"

Article 3 (b) of the Protocol; The UN Commission on Human Rights has also passed resolutions supporting this approach, and has stated that it is "convinced that no person willingly consents to the suffering and exploitation that trafficking of persons entails" - Resolution 2004/45, 16th preambular paragraph.
The definition in the SAARC Convention echoes the much-criticized, narrow and outdated understanding of trafficking solely for the purpose of prostitution, contained in Article 1 of the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others 1949.28 The definition in the SAARC Convention does not distinguish between women, adolescent girls and children and treats them alike. The definition in the SAARC Convention falls short of current international standards and understanding of the crime.

Implications of the Narrow SAARC Definition: The Indian state’s conceptual understanding of trafficking echoes that of the SAARC Convention and its definition is limited to trafficking for the purpose of prostitution, as reflected in the provisions of the Immoral Traffic Prevention Act (ITPA). India signed the Trafficking Protocol in 2002, and therefore ostensibly has the intention of accepting the standards set by the Protocol. The Ministry of Women and Child Development in India has been trying to advocate for an incorporation of the Protocol definition in its proposed amendments to Immoral Traffic Prevention Act. However the definition of ‘trafficking’ in the amendment focuses only on prostitution.29

The implications of a narrow definition of trafficking under Indian law and policy, that focuses only on commercial sexual exploitation, are that trafficking of women and girls for other purposes are largely ignored and excluded from the gamut of state prohibition and prevention, and excluding them from accessing legal and other remedies.

28 The Parties to the present Convention agree to punish any person who, to gratify the passions of another: (1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person; (2) Exploits the prostitution of another person, even with the consent of that person For a critique of the 1949 Convention, see SRVAW E/CN.4/2000/68 pp. 11-12, paras 21-2


International Standards and Approaches

Primarily, there are three approaches in international law, which are:

Law and order approach: Is adopted by most states with regard to trafficking, located within a framework of crime prevention and accompanied by a strong anti-immigration policy.30 This approach ignores the vulnerability and lack of control of the trafficked women and girls, and treats them as responsible for their situation and therefore as criminals, with the potential of arrest, prosecution, punishment and deportation of the women, thereby undermining her rights.31

The Protectionist Approach: A protectionist approach, as adopted in the 1949 Convention and unfortunately adopted to a large extent in the SAARC Convention 2002, views women as vulnerable beings in need of protection from the evils of prostitution. Such an approach undermines women’s human rights and increases their marginalization and vulnerability, reinforces gender differences and discrimination, fails to recognize women’s agency, and limits women’s mobility and freedom of movement, education and livelihood opportunities, making them more vulnerable to trafficking.32

The Human Rights Approach: It entails regarding girls as independent actors endowed with rights, entitled to remedies for the violations committed on them. This approach does not undermine or dismiss the importance of criminal law in


31 The SRVAW has opined that the law and order approach often undermines women’s human rights, as such policies and practices that overtly discriminate against women or sanction such a discrimination would increase women’s chances of being trafficked. SRVAW E/CN.4/2000/68 at pp. 16, para 43

32 The SRVAW called upon all states to “move away from paternalistic approaches that seek to "protect" innocent women to more holistic approaches that seek to protect and promote the human rights of all women, including their civil, political, economic and social rights. SRVAW E/C.N4/2000/68, p. 29, para 88
addressing the crime, and in creating deterrence through the criminal justice system. However, it calls for placing women's and girls’ human rights and respects for their interests, rights and dignity at the centrality of all state actions and policies in addressing the crime of trafficking, and for adopting socio-economic policies and programmes of action in addition to formulation and implementation of the law.33

There exists a plethora of international instruments, standards, principles, guidelines and resolutions on the issue of trafficking in women and girls.34 The human rights framework, derived from these, includes:

- During trafficking: protection and assistance; criminalisation, investigation, punishment and redress;

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33 The Recommended Principles and Guidelines on Human Rights and Human Trafficking formulated by the Office of the High Commissioner for Human Rights (known as the OHCHR Guidelines), encompass a rights-based approach and aim at keeping the human rights of the trafficked person central to all responses to the crime.


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rescue and rehabilitation including health care;

- Prevention of trafficking: ensuring an adequate legislative framework; safe migration procedures; protection to migrant workers; research, analysis and evaluation; international cooperation; gender-specific interventions in disaster management, conflict and post-conflict contexts; empowerment and development.

The Indian Legal Framework

The Constitution of India, under Art. 23 (1), guarantees a fundamental right against exploitation. It prohibits trafficking in human beings and forced labour and makes them punishable in law. In the Indian Penal Code, 1860, there are at least 25 provisions that make acts connected with trafficking as punishable offences. These include:

- Provisions related to causing hurt and grievous hurt (S. 319-338);
- Provisions related to wrongful restraint and wrongful confinement (S. 339-348);
- Assault (S. 351);
- Assault or criminal force to a woman with intent to outrage her modesty (S. 354);
- Procuring a minor girl from one part of the country to another (S. 366A);
- Importation of a girl below 21 years from a foreign country (S. 366B);
- Kidnapping or abduction with intent to secretly and wrongfully confine a person, to subject a person to slavery (S. 359, 362, 365 & 367);
- Buying or disposing of any person as slave, and habitual dealing in slave (S. 370 & 371);
- Selling and buying minor for prostitution (S. 372 & 373 respectively);
Compelling a person to labour against his / her will (S. 374);

Rape (S. 375);

Provisions related to forgery and counterfeiting (S. 463-476);

Criminal intimidation (S. 503);

Word, gesture or act intended to insult the modesty of a woman (S. 509); and

Attempt to commit an offence (S. 511)

In addition to the criminal law provisions, the primary law that deals with the issue of trafficking in India is the Immoral Traffic (Prevention) Act (ITPA), 1956. The law does not make prostitution a punishable offence. However, it is legal only when no third party is involved, it is not done in or near a public place, it is not forced, there is no solicitation, or when the prostitute resides alone. Keeping a brothel or allowing premises to be used as a brothel (S.3), living on the earnings of prostitution (S. 4), procuring, inducing or taking persons for the sake of prostitution (S. 5), prostitution in or the vicinity of public places (S. 7) and seducing or soliciting for the purpose of prostitution (S. 8) are some of the offences punishable under ITPA. It provides for more stringent punishment for offences against children.

ITPA focuses only on abolishing trafficking for prostitution, ignoring other purposes for which trafficking takes place internally and across national borders. It essentially has a law and order approach, and confers wide powers on the concerned authorities in matters of rescue and rehabilitation of victims and survivors. Provisions protecting the human rights of trafficked women are conspicuous by their absence. The ITPA has several limitations, as pointed out by the National Human Rights Commission. It does not have mandatory provisions regarding the role of NGOs; it does not integrate rehabilitation with rescue; it has no express provision for the confiscation of assets amassed by the traffickers, and more importantly it has no provisions for victim protection.

'Trafficking' has not been defined under the Indian laws except in the state-specific Goa Children’s Act 2003. The definition under the Goa Children's Act is significant as it is broadly worded, in consonance with the Trafficking Protocol, focuses on child trafficking within the country and across the national borders, and does not confine itself to trafficking for prostitution or commercial sexual exploitation.

**Anti-Trafficking Policies and Programs**

A National Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children came to be formulated in 1998 and approved by the Prime Minister. The Plan of Action focuses on implementation of the ITPA as well as the rescue and rehabilitation of victims. A Central Advisory Committee on Child Prostitution monitors state implementation of the Plan of Action.

Rather than stand-alone initiatives, the specific interventions

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37 The Goa Children’s Act 2003, in S. 2 (2), defines child trafficking as follows: "child trafficking" means the procurement, recruitment, transportation, transfer, harbouring or receipt of persons, legally or illegally, within or across borders, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving payments or benefits to achieve the consent of a person having control over another person, for monetary gain or otherwise.
of the Indian Government in the area of trafficking have often
detailed with other interventions relating to labour and
education pertaining to girls. The Ministry of Home Affairs, in
association with the United Nations Office on Drugs and Crime
(UNODC) has initiated a two year project for training of Law
Enforcement Officers (police and prosecutors) on human
-trafficking in four States, namely Maharashtra, Goa, West
Bengal and Andhra Pradesh. The Ministry has also set up
a Nodal Cell for dealing with matters relating to trafficking in
human beings. The Cell is inter alia responsible for collecting
and analyzing the data related to trafficking from the State
Governments/UT Administrations, identifying problem areas
and analyzing causes for their being source/transit/destination
areas, monitoring action taken by the State Governments/UT
Administrations for combating the crime and organizing
co-ordination meetings with the nodal Police Officers of States/
UTs. More details of these initiatives are available from the
Ministry's website.38

In 2007, the Ministry of Women and Child Development
(WCD) launched another key anti-trafficking intervention, the
'Ujjwala' scheme for women, girls and children who are
-trafficked for the purpose of commercial sexual exploitation.
The scheme focuses on prevention, rescue, rehabilitation,
reintegration and repatriation. A concern though, is the
formation of community vigilance groups which, ostensibly,
are set up to monitor trafficking, but have the potential to
curb the freedom of movement and other basic rights of
adolescent girls. The Ministry of WCD has also launched the
'Swadhar' scheme to address the needs of women and
girls including those who have been subjected to trafficking.
It aims at providing material, emotional, legal and
psychological support, as well as rehabilitation through
awareness and skill development. The scheme is implemented
through the Social Welfare/ Women and Child Welfare
Department of state governments. Women's Development
Corporations, urban local bodies, public/private trusts and
voluntary organizations.

In addition, state governments have also formulated anti-
-trafficking policies and programmes. For example, the
Maharashtra government set up Anti-Trafficking Cells in
2007, in accordance with an order of the Bombay High Court
in a petition filed by Prema - a non-profit organisation - the
same year. The Cells play a supervisory role whenever a
brothel is raided and girls are rescued. As per the instructions
of the Union Home Ministry, the Maharashtra police initiated
six anti-human trafficking cells in Mumbai, Aurangabad,
Nagpur, Kolhapur, Pune and Nasik, to target trans-border
-trafficking of minors and women who are forced into the
flesh trade and repatriate victims to their homes. These cells
receive funds from the central government.

**Law and Policy Responses**

There have been ongoing efforts to replace IPTA with a
comprehensive trafficking prevention legislation. Since India
has signed the Palermo Protocol, the Ministry of Women
and Child Development (WCD) in India has been trying to
incorporate the wider definition of trafficking, as stated in
the Palermo Protocol, in the proposed amendments to ITPA.
However the definition of 'trafficking' in the amendment
focuses only on trafficking for the purpose of prostitution.39

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38 See S. 5A of proposed amendment, available at http://wcd.nic.in/
6401a.pdf, accessed on 1 October 2012, as follows: 5A. Whoever recruits, transports, transfers, harbours, or receives a person for the purpose of prostitution by means of,

(a) threat or use of force or coercion, abduction, fraud, deception; or

(b) abuse of power or a position of vulnerability; or

(c) giving or receiving of payments or benefits to achieve the consent of such person having control over another person, commits the offence of trafficking in persons.

Explanation.-Where any person recruits, transports, transfers, harbours or receives a person for the purposes of prostitution, such person shall, until the contrary is proved, be presumed to have recruited, transported, transferred, harboured or received the person with the intent that the person shall be used for the purpose of prostitution.
It has been reported that the union ministries of Women and Child Development and that of Health disagree on the contents of amendments. The WCD Ministry wishes to punish the clients of sex workers, and proposes severe penalties, while the Health Ministry disagrees with the approach as it will push the sex workers and the clients underground, making it difficult to extend medical assistance to them, particularly for HIV/AIDS. The underlying premise behind the WCD approach is an assumption that all trafficking is for sex work, and that all sex work is non-consensual, not recognizing that poor women with few skills may opt for sex work to earn an income. They also ignore the voices and views of sex workers, exhibiting a protective and a law and order approach to trafficking.

Judicial intervention in recent years, particularly by the higher judiciary, has infused a human rights approach in law enforcement and justice delivery, which is otherwise dominated by a welfare or crime perspective. This has been done through a focus on protection, compensation to and rehabilitation of trafficked women and girls, in addition to conviction of traffickers. In a landmark judgment in Vishal Jeet vs. Union of India and others (1990, 3 SCC 318) which arose through a public interest litigation against forced prostitution of girls, devadasi and jogins, the Supreme Court called for the following:

- an evaluation of the measures by the central and state governments to ensure their implementation;
- severe and speedy legal action against exploiters including pimps, brokers and brothel owners;
- setting up of a separate Zonal Advisory Committee;
- providing rehabilitative homes; and
- effectively dealing with the devadasi system and jogin tradition.

In Gaurav Jain vs. Union of India, (1997 8 SCC 114) the Supreme Court emphasized on the need to evolve suitable schemes for rescue and rehabilitation of adult and child prostitutes, and issued directions for protection of the human rights of such persons.

It has been reported that due to the intervention of the Delhi High Court between 2001 and 2003, 28 traffickers / exploiters were convicted. In another case before the Delhi High Court, where the women trafficked to Delhi had returned to their native places in Andhra Pradesh, and were reluctant to travel to Delhi to provide evidence against the exploiters, the High Court ordered inter-state video conferencing, along with safeguards to protect the victim-witnesses. In Prerana vs. State of Maharashtra (2003 2 MLJ 105), the Bombay High Court took serious objection to the judicial authority treating trafficked children as 'confirmed prostitutes', and reiterated the human rights of trafficked persons, which had to be central to state action. While the High Courts and the Supreme Court have repeatedly emphasized the need to protect the human rights of trafficked persons, the approach of the lower courts warrants a further study.

Cross-border trafficking from the neighbouring countries, particularly Nepal and Bangladesh, are dealt with through a SAARC Convention on Trafficking in Women and Children, concluded in 2002. As discussed above, this Convention defines trafficking in a narrow manner, assuming that all trafficking is for prostitution. It essentially adopts a law and order approach, with inadequate focus on the human rights of the trafficked women and girls. The Indian state has been working with its counterparts in other South Asian countries on a joint plan of action and a road map for safe repatriation of rescued women and girls to their countries of origin.

In conclusion, despite the launching of various anti-trafficking laws, policies, programmes and cells, the desired effect in

40 Chatterjee, Patralekha (2008). pp. 975-976

41 Nair, P M & Sen, Shankar (2005). p. 284
terms of reduction in the crime has not been achieved, as is obvious from Table 8.2 below. Case studies compiled by SANLAP indicate that one of the most formidable trafficking-related challenges in India relates to the lack of awareness on the part of victims, their families and communities regarding the existing legal protection for victims.\textsuperscript{43} A study on trafficking, by the National Human Rights Commission, indicates the inhuman manner in which trafficked girls are treated by the law enforcers, in violation of their basic dignity and rights.\textsuperscript{44} Hence a critical review of implementation of anti-trafficking measures, policies and laws in India is the need of the day.

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|c|c|c|}
\hline
\hline
Procuriation of Minor Girls (Sec. 366-A IPC) & 224 & 237 & 679 & 862 & 27.0 \\
Importation of Girls (Sec. 366-B IPC) & 67 & 48 & 36 & 80 & 122.2 \\
Selling of Girls for Prostitution (Sec. 372 IPC) & 49 & 57 & 130 & 113 & -13.1 \\
Buying of Girls for Prostitution (Sec. 373 IPC) & 30 & 32 & 78 & 27 & -65.4 \\
Immoral Trafficking (Prevention) Act, 1956 & 2659 & 2474 & 2499 & 2435 & -2.6 \\
Total & 3029 & 2848 & 3422 & 3517 & 2.8 \\
\hline
\end{tabular}
\caption{Incidence of Various Crimes under Human Trafficking 2008-11}
\end{table}

Source: Crime in India 2011, National Crime Research Bureau, Ministry of Home Affairs, Government of India

E. ACID ATTACKS

Acid attacks against adolescent girls and young women in India are on the rise. Some instances reported in the media are:

- In 2002, Sonali Mukherjee, a 19-year-old girl from Jharkhand, topped her college and was aspiring to be a professor someday. Within a year, three men, whose advances she had been spurning for a while, threw acid on her. With 72% burns, she lost her eyesight and her face and body were disfigured. In July 2012, nine years since the incident, Sonali and her family are struggling for justice, and for her medical treatment. Her attackers included a 40-year-old married man, and an 18-year-old. The teenager was not convicted on account of being a juvenile, while the other two were convicted for nine years, but reportedly appealed to a higher court, which reduced the sentence to four years' imprisonment. Meanwhile, Sonali continues to struggle to put together the Rs. 15 lakh she still needs for her treatment.\textsuperscript{45}

- A young woman, Swapnika, died in December 2008 as a result of acid attack in Hyderabad by three men, one of who claimed to be in love with her.

- Laxmi, a teenaged girl from Delhi, had acid thrown on her face by a jilted lover in 2009. Her face was disfigured in the attack. She filed a public interest litigation in the court, for enacting a law providing for exemplary punishment for acid attacks on girls, as also a sound rehabilitation scheme for victims.\textsuperscript{46}

- A 19 year old girl was grievously injured in an acid attack on the outskirts of Cuttack in May 2011. She suffered over 20% burns in her face, chest and abdomen.\textsuperscript{47}

\textsuperscript{43} International Development Law Organization (2011), pp 13-14

\textsuperscript{44} Discussed in detail, ibid


\textsuperscript{46} 'Acid Throwers Face Jail for Life', The Times of India, 7 July 2009 http://www.ndtv.com/article/cities/acid-attack-on-teenage-girl-police-suspect-rivalry-105315
Three youths on motorcycle threw acid on 18 year old Ritu Saini, a state level volleyball player in Rohtak, Haryana, in May 2012. She sustained 20% burns and was admitted in the hospital. Motive was not known.48

A teenaged girl from Pratapgarh, Uttar Pradesh was reported to be in a critical condition in February 2012 after a young man attacked her and her family members with acid for repeatedly rejecting his overtures.49

A girl was reportedly injured in an acid attack in Kolkata when she was travelling on a motorcycle with a boy in April 2011.50

A teenaged girl was reported in a critical condition after an acid attack in Kerala in May 2012.51

Kalyani, a 14 year old, Class 9 student of Andhra Pradesh, died after an acid attack on her in June 2012. Reports suggest that her parents could have poured acid on her in a fit of rage over the fact that she was mingling with boys of her age.52

In August 2012 in Kashmir, a pro-Al Qaeda group has warned women and girls that it will kill them or disfigure their faces with acid if they are seen unveiled or using the mobile phone in public.53

The words of the Law Commission of India aptly capture the crime of acid attacks and its implications for women and girls. It states:

"Though acid attack is a crime which can be committed against any man or woman, it has a specific gender dimension in India. Most of the reported acid attacks have been committed on women, particularly young women for spurning suitors, for rejecting proposals of marriage, for denying dowry etc. The attacker cannot bear the fact that he has been rejected and seeks to destroy the body of the woman who has dared to stand up to him."54

In a majority of attacks, adolescent girls and young women are being killed, maimed, blinded or scarred for life for rejecting suitors, refusing to have sexual intercourse, defying custom, or targeted in family feuds and land disputes.

**Law and Policy Responses**

Despite several reported incidents of acid attacks on adolescent girls and young women, the Government of India's National Crime Records Bureau (NCRB) does not have separate figures for the number of acid victims even in its publication Crime in India 2011. A study conducted by Cornell University in January 2011 said there were 153 attacks reported in the media from 1999 to 2010.55 The Campaign and Struggle Against Acid Attacks - a civil society network working on the issue - has compiled a list of 65 cases in Karnataka alone, between 1999 and 2008.56

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53 Nelson, Dean, 'Kashmiri Women Ordered to Cover up or Risk Acid Attack', The Telegraph, 13 August 2012
54 Law Commission of India, Report No. 226, p. 3
55 Quoted in Nita Bhalla, 'Disfigured Victim's Plea to Die Exposes India's Acid Violence', Trustlaw, 27 July 2012
The easy availability of acid is an issue that the judiciary has expressed concern with. The central and state governments are reported to have been directed by the Supreme Court to restrict sale of acid to prevent rising incidents of acid attacks on women. However, the Minister of State for Home Affairs Jitendra Singh is reported to have informed the Lok Sabha that the chemicals and fertilizers ministry had said that there could be no statutory control over acid distribution, and that a new section had been inserted in the criminal procedure code to provide for compensation to victims of acid attack. He further added that the state governments have been directed to formulate a Victim Compensation Scheme. It appears that the government believes in cure rather than prevention!

In 2006, in a significant judgment in a case of an acid-attack on Hasina Hussain by her ex-boss Joseph Rodrigues, the Karnataka High Court treated the offence of throwing of acid as an attempt to murder (rather than an attempt to cause grievous injury) and imposed a life sentence on the perpetrator. In an incident of acid attack against three teenaged girls in June 2011 in Rohtak, Haryana, the Punjab and Haryana High Court has reportedly directed the CBI to investigate after the police was accused of exonerating the accused. This is as much indicative of the failure of the police investigative machinery as it is of the positive response of the judiciary. The court reportedly set a six-month deadline to CBI to complete the probe and directed the agency to also investigate allegations of police exonerating the culprits. The Haryana government was also asked to pay compensation to the victims by 31 May 2012.

It has also been reported that Haryana faces a wave of acid attacks against women. Incidentally, Haryana is also a state infamous for female sex selective abortions, indicative of the low social status of women. The state administration has responded to this heinous crime by being the first state to offer assistance in rehabilitation of the victim-survivors, including reimbursement of the complete cost of medical treatment including plastic surgery. The scheme, titled 'Relief and rehabilitation of women acid victims', aims to provide adhoc relief, medical reimbursement and rehabilitation services to women acid victims residing in the state.

In 2008, the National Commission for Women drafted Prevention of Offences by Acids Bill, aimed at treating acid attacks against women as a heinous offence, helping survivors with psychological, social, medical and legal support and rehabilitation, as well as for regulation and control of acid and corroborative substances. The Bill, in its statement of aims and objectives, spells out acid attacks as a form of gender-based violence that results in, or is likely to result in, physical, sexual, psychological harm or suffering to women. In July 2009, the Law Commission of India submitted its recommendations to the Supreme Court on inclusion of a provision in the Indian Penal Code, and to provide compensation to victims.

The Criminal Law Amendment Bill 2012, which primarily focusses on sexual assault, has also addressed the issue of acid attacks. It proposes insertion of sections 326A and 326B in the IPC for making acid attack a specific offence.

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58 Ibid
60 HC Directs CBI to Probe Acid Attack on Girls in Haryana, The Times of India, 13 May 2012
61 Ibid
62 Acid Attacks: Haryana Women Face New Form of Assault, The Times of India, 28 May 2012
64 The text of the Bill is available at http://ncw.nic.in/pdffiles/offences_by_acids.pdf, accessed 18 October 2012
65 Law Commission of India, Report No. 226
F. 'HONOUR' CRIMES

Violence against women among South Asians is in some way or the other connected to 'honour' of the family built on control of sexuality, fertility and labour of the women. This leads to the heinous crime called 'honour crimes'. Recently there have been a spate of attacks and killings in the country, which are dastardly and dishonourable. These are attacks/killing of victims of a family or social group by other members, based on the notion of the perpetrators that the victim has brought dishonour to the family/community. Honour crimes are directed mostly at young women and girls, though extended to men sometimes. It is reported that women and girls are killed at a much higher rate than men.

Human Rights Watch defines "honour killings" as:

...acts of vengeance, usually death, committed by male family members against female family members, who are held to have brought dishonour upon the family... The mere perception that a woman has behaved in a way that "dishonours" her family is sufficient to trigger an attack on her life.

'Honour attacks' are based on male supremacy, as indicated by the fact that in most of the cases, it is the male relatives of the girl who perpetrate the crime. Such attacks take place against women and girls who are perceived to have crossed social boundaries or transgressed social norms. They are based on the notion that honour of a family is dependent on the behaviour of the women / girls in the family, and that the family has a right to subjugate the women / girls and deprive them of their basic rights, even to the point of killing them, in order to redeem its honour. The notion of 'izzat' (honour) and its contribution to the social and ideological context of violence against women, particularly in choice marriages, has been elaborately discussed elsewhere.

Honour is seen as a standard men possess but which women and girls carry stamped on their bodies. The attack is intended to erase shame, restore honour and enforce a social code that defines and controls the lives of women. The perceived dishonour is normally the result of one of the following behaviours, or the suspicion of such a behaviour:

- Dressing in a manner unacceptable to the family or community;
- Wanting to terminate or prevent an arranged marriage;
- Desiring to marry by own choice, with the relationship being perceived as inappropriate based on religion / caste / gotra etc;
- Engaging in / perceived to be engaging in heterosexual sexual acts outside marriage relationship;
- Engaging in / perceived to be engaging in homosexual acts;
- Being a victim of sexual assault;
- Seeking a divorce, including from an abusive husband;
- Any other autonomous decision or action taken by a woman / girl with regard to her social / sexual existence.

Magnitude of the Crime

Honour crimes are often under-reported, and are classified as accidents or suicides, making it difficult to understand the magnitude of the crime in India. No official statistics on these crimes are available at the national level. The National Crime Records Bureau does not have a separate category of honour attacks committed against women and girls. A majority of these killings take place in the agrarian states of Punjab, Haryana, Uttar Pradesh and Rajasthan, where

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66 Patel, Vibhuti (2011)
68 See Human Rights Watch (2001)
69 See Chakravarti, Uma (2006), pp. 308-331
70 Hamdani, Insha (2004), p. 19
land ownership and caste together help in fuelling an honour culture by maintaining caste and gender hierarchies.\textsuperscript{71} No statistics are available from Haryana, where incidents of honour killings, based on orders of khaps panchayats, are reported to be high. According to data compiled by the Punjab Police, 34 honor killings were reported in the state between 2008 and 2010: 10 in 2008, 20 in 2009, and four in 2010.\textsuperscript{72} However, contrary to the belief that the crime is confined to the northern states of the country, southern states, particularly Tamil Nadu\textsuperscript{73} and Karnataka\textsuperscript{4}, have also reported incidents of crimes based on the notion of honour. Tehelka reported seven honour killings in twelve weeks in 2010 in the state of Tamil Nadu.\textsuperscript{75} Non-governmental sources opine that nationally, there are at least 1000 honour killings per year in India.\textsuperscript{76}

Despite a lack of data on the magnitude of the crime, it has been well-documented that young persons, who exercise their choice in relation to marriage and have inter-caste, intercommunity, or inter-religious marriages, are attacked by their families or communities, with such brutality that they are often killed.

\textsuperscript{71} Shukla, Shobha (2012)


\textsuperscript{73} For more details, see Honour Killings in Tamil Nadu, Deccan Chronicle, 15 July 2012

\textsuperscript{74} For example, the killing of Suvarna in Abalavadi village, Mandya district in November 2011, for having a five year relationship with a dalit boy. The torture and killing was reportedly perpetrated by her relatives and egged on by her father in the presence of the boy and his family members as well as 300 odd villagers, none of whom intervened. For more details, see http://news.in.msn.com/exclusives/it/article.aspx?cp-documentid=5840031, accessed on 1 July 2012. In March 2012, a woman was allegedly strangled to death by her brother for having married a dalit man. For more details, see http://www.thehindu.com/news/states/karnataka/article2992019.ece, accessed 1 July 2012

\textsuperscript{75} Seven Honour Killings in Twelve Weeks: Tamil Nadu does it Too', Tehelka Magazine, Vol. 7, Issue 42, 23 October 2010

\textsuperscript{76} http://www.honourkilling.in/#/?p=125, accessed 1 July 2012

Law and Policy Responses

The Police: Police has often responded to the crime with apathy and committed a gross dereliction of duty. For example, in the case of Suvarna who was brutally thrashed and hanged in the presence of 300 odd villagers in Mandya district, Karnataka, in November 2011, the police had reportedly advised the dalit boy whom she had eloped with, to flee from the village along with his family and not to lodge a complaint. The crime came to light only in January 2012, when the boy's brother came out of hiding. Senior police officials thereafter started investigating the crime.\textsuperscript{77} In another instance, in May 2012, there was a public outcry and an official attempt at damage control after a DIG of police from Uttar Pradesh, S.K.Mathur, openly advocated honour killing by allegedly telling the father of a kidnapped girl that he would kill his sister if she had eloped.\textsuperscript{78} In the context of honour killings in Tamil Nadu, a human rights activist and director of an organisation working on dalit rights, Mr. A. Kathir, reportedly opined that the number of honour killings which come to light are very few as in many cases, the police fail to mention honour killing.\textsuperscript{79} These incidents are an indication of the patriarchal views and caste-related prejudices that police officials hold, which need to be urgently addressed if perpetrators of the heinous crime are to be made accountable.

The Judiciary: In recent times, young couples have often approached the courts, seeking protection orders from their families and communities. The judiciary's response has been more positive. A 2012 publication of Association for Legal Advocacy and Initiatives (AALI) - a non-profit organisation that intervenes in cases of right to choice in marriage - has compiled about 80 judgments of the High

\textsuperscript{77} http://video.in.msn.com/watch/video/karnataka-girl-hanged-for-eloping-with-dalit-boy/24s180la, accessed 1 July 2012


\textsuperscript{79} Honour Killings in Tamil Nadu, Deccan Chronicle, 15 July 2012
Courts and the Supreme Court, which have upheld women's right to choice. These judgments have been compiled in an effort to remind governments of their responsibilities to protect women who exercise their right to sexual autonomy.\textsuperscript{80}

An example of positive judicial response is the judgment of Lata Singh vs State of Uttar Pradesh, where the Supreme Court directed the police in every State to protect young persons who exercise their choice in marriage.\textsuperscript{81} On the issue of honour killings, it opined as follows:

"We sometimes hear of 'honour' killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism." (para 18)

In another case, the Supreme Court observed as follows:\textsuperscript{82}

"We have in recent years heard of 'Khap Panchayats' (known as katta panchayats in Tamil Nadu) which often decree or encourage honour killings or other atrocities in an institutionalized way on boys and girls of different castes and religion, who wish to get married or have been married, or interfere with the personal lives of people. We are of the opinion that this is wholly illegal and has to be ruthlessly stamped out. As already stated in Lata Singh's case (supra), there is nothing honourable in honour killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder. Other atrocities in respect of personal lives of people committed by brutal, feudal minded persons deserve harsh punishment. Only in this way can we stamp out such acts of barbarism and feudal mentality. Moreover, these acts take the law into their own hands, and amount to kangaroo courts, which are wholly illegal. (para 16)

Hence, we direct the administrative and police officials to take strong measures to prevent such atrocious acts. If any such incidents happen, apart from instituting criminal proceedings against those responsible for such atrocities, the State Government is directed to immediately suspend the District Magistrate/Collector and SSP/SPs of the district as well as other officials concerned and chargesheet them and proceed against them departmentally if they do not (1) prevent the incident if it has not already occurred but they have knowledge of it in advance, or (2) if it has occurred, they do not promptly apprehend the culprits and others involved and institute criminal proceedings against them, as in our opinion they will be deemed to be directly or indirectly accountable in this connection." (para 17)

Judicial response to honour killings is intricately linked to issues of right to marry, agency in marriage and age of consent, which are discussed in further detail in Chapter 7 of this book.

In a landmark judgment in March 2010, Karnal district court in Haryana convicted perpetrators of a killing in Kaithal and sentenced with life imprisonment the chief of the khap panchayat which ordered the killings of Manoj Banwala (23) and Babli (19) after they, belonging to the same gotra (clan), had eloped and married.

In June 2010, scrutinizing the increasing number of honour killings, the Supreme Court reportedly issued notices to the Central Government and six states including Uttar Pradesh, Punjab, Haryana and Rajasthan to take preventive measures against honour killings.\textsuperscript{83} The court had reportedly called

\textsuperscript{80} AALI (2012)
\textsuperscript{81} AIR 2006 SC 2522
\textsuperscript{82} Arumugam Servais v State of Tamil Nadu (2011) 6 SCC 405
\textsuperscript{83} "Honour killing: SC notice to Centre, Haryana and 6 other states". The Times of India, 21 June 2010
honour crimes as "barbaric and brutal murders by bigoted persons with feudal minds". A Division Bench of the Supreme Court sought response from the respective governments on the petition filed by a non-profit organisation - Shakti Vahini - which had sought stern action against those resorting to killing in the name of honour. The organisation complained that though there was a spurt in such killings in Punjab, Uttar Pradesh, West Bengal and Haryana, neither the Centre nor the state governments were taking steps to curb the menace due to vote-bank politics. 

However, not all judges are progressive in their approach and determined to stop the crime. For example, Justice (retd) Devi Singh Teotia, a former judge of the Punjab & Haryana High Court and active member of the Sarv Khap Panchayat, reportedly opined that khap leaders are keepers of Jat tradition, and demanded legalising of the khap panchayats that openly issue 'death sentences' for couples who defy their caste-diktats on love and marriage.

**Law Reform:** Since 2010, there has been intense public discourse on the need for law reform. Law reform initiatives that are being contemplated for addressing the crime include:

- Adding a new clause in Section 300 of the Indian Penal Code (IPC) to specifically categorise honour killing as murder, and making relevant amendments to procedural law;
- Amending the evidentiary law and shifting the burden of proof on the accused;

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65 Ibid
67 For a detailed discussion on law and policy changes in the anvil, see Ramaseshan, Geeta (2012a)
68 For a critique of this proposal to shift the burden of proof on the accused, and how it infringes on the right to fair trial, see Ramaseshan, Geeta (2011), pp. 26-27

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69 Bhatnagar, Rakesh (2012)
70 For a more detailed discussion on this amendment, see Ramaseshan, Geeta (2011), pp. 26-27
71 Ibid
72 Ananya Sen Gupta, 'Call for Law against 'Honour Killings', The Telegraph, 14 May 2012
played by the administration and police, who fail to take steps to protect the victims even when they know of the threat. The steering committee has recommended that the new law fix the police’s liability, and calls for protection of the threatened couples against false charges such as kidnapping and for safe houses to be provided to them. The central government has received similar recommendations for a stand alone law from a Planning Commission’s working group in January 2012 and from a Group of Ministers (GOM) set up in 2010 to examine the issue. The National Commission for Women (NCW) has proposed a stand-alone law, titled ‘The Prevention of Crimes in the Name of ‘Honour’ and Tradition Bill 2010.’ Civil society proponents of a special law on honour killing argue that killings motivated by dowry and sati are also murders, but special laws have been enacted as murders in the name of social tradition cannot be dealt with on par with ordinary murders.

G. OTHER LAW REFORM INITIATIVES ON VIOLENCE AGAINST GIRLS

Many Bills / draft laws are pending, and are at varied stages of being passed in the Parliament, dealing with aspects of violence against girls. Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, Sexual Harassment at Workplace Bill, Criminal Law Amendment Bill (on sexual assault), The Protection of Children from Sexual Offences Bill are some of them. The Women and Girl Child (Prevention of Atrocities) Bill, 2012 has also been introduced in the Parliament as a means to curb violence against women and girls in public and private spaces, and to restore such persons to a respectable position in society.

With the intent of protecting all children from sexual offences, the Protection of Children from Sexual Offences Bill was passed by the Parliament in 2012. While it has many progressive provisions that plug the existing lacunae in law with regard to sexual offences against both male and female children, the Bill also criminalises all sexual acts of girls below the age of 18. There is a growing concern that the provisions of the Bill could have various negative ramifications. These include:

- Criminalising all sexual acts of girls below the age of 18, either with an adolescent boy or an adult man, could have the effect of victimising adolescent minor girls having consensual physical intimacy, and may lead to complaints by family members and others;
- The Bill calls for mandatory reporting by anyone who “apprehends” that an offence may be committed, which could encourage moral policing by family members and others, of consensual physically intimate acts by adolescent girls; and
- The provision related to mandatory reporting also has the potential to be used against non-profit organisations, child rights groups, women’s rights activists or family members who may hesitate to report such acts to the police.
- The Bill is also silent on marital rape, which means that the provision in the Indian Penal Code related to rape applies - this provision penalises sexual act by husband of a girl below the age of 15. If the Bill and the IPC provision on rape are read together, sexual intercourse with a girl between the age of 16 to 18 would be legal if it is within the framework of marriage, but would be

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94 Its draft is available at http://ncw.nic.in/PDF/Files/Bill_against_honour_killing_crimes.pdf, accessed 18 October 2012
95 See Krishnan, Kavita (2009)
96 For more details see http://csrindia.org/blog/tag/violence-against-women/, accessed 1 September 2012
97 This Bill has been passed by the Parliament and awaits Presidential assent at the time of publication of this book.
98 For an elaborate critique of provisions of the Bill, see Ramaseshan, Geeta (2012b) ‘Law and the Age of Innocence’, The Hindu, 19 June 2012
an offence if it is not within a marital relationship. There
is no rationale for these rather confusing / contradictory
legal provisions.

The move of criminalising sexual acts below the age of 18
completely disregards the growing evidence of sexual
activity among adolescent girls and boys in India in early /
mid-adolescence.

The Incest Offences Bill, 2012 seeks to make acts related
to incest, as punishable offences, prescribing a punishment
of not less than ten years' imprisonment.\textsuperscript{99}

The Pre-Conception and Prenatal Diagnostic Techniques
Act, 1994, makes the use of prenatal diagnostic techniques
for sex determination a crime punishable by law. However,
the lack of proper implementation has resulted in female
sex-selective abortions being a common practice. The Pre-
Conception and Prenatal Diagnostic Techniques Bill, 2012
seeks to provide for a "constitution of District Working
Committees at district level to create awareness among the
masses and to check increasing offences of female foeticide
in every district, and enhancing the penalty for contravention
of the Act so as to deter people from committing such
offences.\textsuperscript{99}

Violence against adolescent girls in the Indian society is
both systemic in nature, as well as attracts impunity to a
large extent. The backlash against girls who exercise their
agency, transgress social norms and assert their rights, in
the form of violence including honour crimes and acid
attacks, is routine. While all these initiatives at law reform
attempt to protect and promote the safety of women and
girls within the home and in public spaces, it must be noted
that state’s discharge of its responsibility towards adolescent
girls ought not to be limited to enacting legislations. The
state should also work towards preventing and restoring to
individual survivors of violence, their dignity and a due place
in society. Ultimately laws can be effective in addressing
violence against girls, only if they are complemented by
social and political processes, including awareness-raising
among girls, a change in mindset among men and women,
education, economic empowerment and poverty alleviation.

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\textsuperscript{99} For more details see http://csrindia.org/blog/tag/violence-against-
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30. Chhatigarh Witchcraft Atrocities Prevention Act, 2005

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33. Immoral Traffic (Prevention) Act (ITPA), 1956


35. Protection of Women from Domestic Violence Act 2005

36. The Bonded Labour System (Abolition) Act, 1976

37. The Child labour (Prohibition and Regulation) Act, 1986

38. The Indecent Representation of Women (Prohibition) Act, 1986

39. The Indian Penal Code

40. The Information Technology Act, 2000

41. The Juvenile Justice (Care and Protection of Children) Act, 2000

42. The Prevention of Witch (Daain) Practices Act 1991 (Bihar)

43. The Probation of Offenders Act, 1958
Chapter 9
Engaging With The Juvenile Justice System

"In principle, our country has one of the most advanced juvenile justice systems in the world today, with a strong child-centric focus and a clear separation between adult and child jurisdictions... However, there is a long way to go in the implementation and realization of this system... Children ended up worse than what they were before they entered the Juvenile Justice System, with abuse and lack of access to basic entitlements of education and health prevalent across custodial institutions. Backlogs of pending cases of children in conflict with law before the JJBs have been reported, in some States. Long-term institutionalisation with uncertainty and deprivation of education, health and other entitlements continue to be the bane of the system. Although there has been a total paradigm shift in the language of the JJ Act, which looked at restoring the self-worth and dignity of the child through counselling and appropriate rehabilitation, this spirit is not reflected on the ground." - National Commission for Protection of Child Rights, www.ncpocr.gov.in/issues.htm
Juvenile justice is a branch of law that deals with minor/under-aged persons who have been accused of offences or who are neglected or abandoned by their parents / guardians. It is more concerned with the rehabilitation of its charges than is adult criminal justice. Since a child / juvenile is defined to be persons under eighteen years of age, this standard is applicable to adolescent girls. When discussing juveniles in conflict with law (juveniles accused of offences), international agreements generally emphasize the importance of preventing juveniles from coming into conflict with the law in the first place, as well as an expectation of complete rehabilitation by the time they leave the juvenile justice system. International standards recognize “the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth.” This chapter attempts an analysis of law and policy on juveniles in India from a gender perspective, highlights its impact on adolescent girls, and raise issues for further study, based on information and statistics available in the public domain.

A. RATIONALE FOR EXAMINING THE ISSUE OF ADOLESCENT GIRLS WITHIN THE JUVENILE SYSTEM IN INDIA

Internationally girls have remained a small portion of the juvenile justice population. India is no exception to this trend. As the statistics in Tables 2.4 in Chapter 2 of this book indicate, girls make up only 5-7% of total juveniles in conflict with the law. This ‘gender divide’, particularly with regard to juveniles in conflict with the law, has been taken note of by the Indian government. Why then are we examining the issue of adolescent girls within the juvenile system in the Indian context?

The juvenile justice system in particular, and the criminal justice system in general, operate as another form of control over girls. Adolescent girls and young women who deviate from socially defined norms of behaviour are at possible risk of being apprehended under the criminal laws of the country. Hence it is important to examine the role of the state and the law in exercising custody and control over adolescent girls through the juvenile justice system, and to examine whether, and in what manner, the juvenile justice mechanism contributes to the development of adolescent girls to their fullest potential.

There is little understanding and analysis of why girls commit offences in the Indian context, which offences they are more prone to commit and under what circumstances. There is also lacuna in our understanding as to whether or not the girls have been charged with offences due to ulterior motives - including family rivalry, to gain patriarchal control and by way of preventing / silencing girls from complaining about crimes perpetrated against them. A further question that arises in this regard is whether the entry of an adolescent girl into the juvenile justice system is a manifestation of her further victimisation. Instead of exploring the reasons why girls commit crimes, we tend to assume that it must be same as for boys, though we are aware of the fact that adolescent boys and girls have distinctly different experiences in society due to their gender. It would be illogical to think that this would not be the case with regard to the juvenile justice system as well.

Based on the premise that factors related to adolescent girls and young women committing crimes is qualitatively different from that of boys and young men, policies, programmes, strategies and laws on juvenile justice ought to take into consideration experiences and needs of girls too. This chapter seeks to examine if this is adequately done in the

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1 Van Bueren, Geraldine (2006), p. 170
2 Vats, Somnath (2008), p. 155
3 Convention on the Rights of the Child, Art. 40
5 Gilmore, Jenny and Manning, Linda
Indian context.

In the international context too, there has been a historic neglect in examining, understanding and addressing issues of adolescent girls within the juvenile justice system as they had formed only a small component of juveniles within the system. There have been attempts at examining gendered differences in girls' entry into delinquency, patterns of the offences they commit/accused of, as well as their behaviour and needs while within the juvenile system. In the last decade, the impetus to focus more on girls arose from a realisation that they were the fastest growing segment in the juvenile justice population. It is important for India to proactively engage in a similar exercise even before a possible situation of increased crimes by girls arises, in order that preventive measures can be undertaken.

Further, in the Indian context, where son preference exists, and daughters are devalued in the family as well as the community, there is a high number of girls who are neglected and/or abandoned, and are in need of care and protection. They form a vulnerable group - at risk of falling within the juvenile justice system in India. With a reported increase in violence against adolescent girls, trafficking for sex work and other purposes, abuse of adolescent girls who work as domestic workers and violence in schools and in conflict situations, juvenile justice becomes a relevant issue to contend with.

B. THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK

The basis for lesser culpability of children and juveniles in conflict with law stems from the physical and psychological development, and emotional and educational needs of juveniles as compared to adults. In international law, juveniles are children below 18 years of age.

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6 Bloom, Barbara E. (2001)
7 For more details, see ibid; Gilmore, Jenny and Manning, Linda
8 International Covenant on Civil and Political Rights, Article 6(5)
9 Ibid, Article 10(2)(b)
10 Ibid, Article 10(3)
11 Ibid, Article 14(3)
12 Rule 13(1)
13 For more details, see Mehta, Nilima (2008)
Rights of the Child (CRC) are:

- Treatment should be consistent with the child's sense of dignity and worth;
- Treatment should reinforce the child's respect for the human rights and freedoms of others;
- Treatment that takes into account the child's age and promotes the child's reintegration and the child's assuming a constructive role in society; and
- Respect for the dignity of the child requires that all forms of violence in the treatment of children in conflict with the law must be prohibited and prevented.

Based on these principles, the CRC guarantees the juvenile a right against torture, inhuman or degrading treatment; capital punishment and life imprisonment. It prohibits unlawful arrest and arbitrary deprivation of liberty of juveniles, reiterating standards set by the Beijing Rules that imprisonment should be as a last resort and for the shortest period of time. Various conditions have been laid down related to arrest, detention and imprisonment, including separation from adult offenders while in custody, access to legal assistance, speedy trial and right to remain in contact with family. The CRC also provides alternative measures to judicial proceedings, for juveniles who violate criminal law. It calls upon states to establish and promote distinctive juvenile justice mechanisms with a specific emphasis on positive, rather than punitive aims, including institutional care for rehabilitation and reintegration in society.

The UN Committee on Child Rights has given guidelines as to the core elements that states should focus when they formulate a comprehensive policy on juvenile justice. These include:

- Prevention of juvenile delinquency
- Interventions without resorting to judicial proceedings, and measures in the context of judicial proceedings
- Minimum age of criminal responsibility - should be set high, with due consideration to aspects of emotional, mental and intellectual maturity
- Guarantees for a fair trial
- Protective measures - including prohibition of death penalty and life imprisonment without parole
- Safeguards for deprivation of liberty - such as arrest, detention or imprisonment as a last resort; procedural protection for the shortest appropriate period of time

The preventive aspect of juvenile delinquency was subsequently elaborated upon by the 1990 UN Guidelines for Prevention of Juvenile Delinquency (called the Riyadh guidelines). It provides a comprehensive framework and policy guidelines for preventing juvenile delinquency, founded on principles of best interests of the child and the child's right to development. In the same year, in response to prevalent practices internationally in treatment of juveniles deprived of their liberty, the UN General Assembly adopted the UN Rules for the Protection of Juveniles Deprived of Their Liberty. In 1997, the UN General Assembly adopted the UN Guidelines for Action on Children in the Juvenile Justice Systems. These three sets of rules complement the provisions of CRC and ICCPR and together, form the body of international human rights standards on juvenile justice.

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14 These are provided for in the Convention on the Rights of the Child, and elaborated upon by the Committee on Rights of the Child, General Comment No. 10, 25 April 2007, CRC/C/GC/10,para 13
15 Ibid, Article 37(b)
16 Ibid, Article 37 (c) and (d)
17 Ibid, Article 40(3)(b)
18 Ibid, Article 40(4)
19 Ibid at paras 16-89
20 UN General Assembly Resolution 45/112, 14 December 1990
21 UN General Assembly Resolution 45/113, 14 December 1990
22 Annexed to the Economic and Social Council Resolution 1997/30, 21 July 1997

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C. THE LAW IN INDIA

Juvenile justice policy in India is largely governed by the constitutional mandate given under Article 15 that guarantees special attention to children through necessary and special laws and policies that safeguard their rights. The policy is also founded on the constitutional guarantees such as the right to equality, protection of life and personal liberty and the right against exploitation (enshrined in Articles 14, 15, 16, 17, 21, 23 and 24). The policy is also influenced by international standards and jurisprudence, discussed more elaborately in the section above.

The Juvenile Justice (Care and Protection of Children) Act 2000 was enacted in order to treat juveniles in conflict with the law as well as neglected / abandoned juveniles with compassion and to subject them to a reformatory and rehabilitative programme to ensure that they do not slip into the "big bad world" when they grow up. It was amended in 2002 and 2006. The law covers all aspects of interface of juveniles and the criminal legal system. The law provides for separate treatment for children in need of care and protection as well as juveniles in conflict with the law, situated within the overall objective of preserving the dignity and best interests of the child. The law aims at providing for proper care, protection to and treatment of juveniles by catering to their development needs, and by adopting a juvenile-friendly approach in the adjudication and disposition of matters in their best interest. This law is now the primary legal framework for juvenile justice in India.

A 'child' in this Act is defined as a person who has not completed the eighteenth year of age. Under the law, 'children in conflict with law' means a juvenile who is alleged to have committed an offence, while children in need of care and protection include those who are being or is likely to be grossly abandoned, abused, tortured or exploited for the purpose of sexual abuse or illegal act. This Act also clearly recognizes that civil society needs to be involved significantly if true justice is to be provided to all children and hence provides ample scope for involvement of citizens either through voluntary organizations or individuals who are 'public spirited citizens'. The Act contemplates remand homes, Juvenile Justice Boards and Child Welfare Committees in every district, and provides for four types of homes for juveniles - observation homes, special homes, children's homes and shelter homes, and in addition, after-care organisations. Please see Matrix 9A below for further details. The Act prescribes for establishment of a Child Welfare Committee in each district, by the state government, to focus on issues related to juveniles in need of care and protection, and the Juvenile Justice Board for addressing issues concerning juveniles in conflict with the law. The law also provides for Special Juvenile Police Unit (SJPU) to be established to effectively handle juveniles, and for every police station to have a Juvenile or Child Welfare Officer, who is supposed to be trained and oriented to treating juveniles with care. The Juvenile Justice (Care and Protection of Children) Rules, 2007 forms a model of the rules based on which each state is to prepare its own rules that are necessary to further detail the way the Act would be implemented.

27 See S. 2 (l)
26 S. 2(d) (vi)
24 JJA provides for Observation Homes (Section 8); Special Homes (Section 9); Childrens Homes (Section 34); Shelter Homes (Section 37); and After-care Organisations (Section 44).
Matrix 9A: Institutions under the Juvenile Justice Act 2000

Application of the law to adolescent girls:
Under law, juveniles ‘in need of care and protection’, includes adolescent girls in the following situations:

- When a girl is abandoned, is found without any home or settled place and has no ostensible means of subsistence;
- Who resides with another person, and such a person has threatened to kill or injure the girl, has killed, abused or neglected other children and there is a reasonable likelihood of the girl being subjected to a similar treatment;
- Mentally / physically challenged girls / girls with terminal / incurable diseases with no one to take care of them;
- Who has a parent or guardian, who is unfit or incapacitated to exercise control over the girl;
- Missing / run away girls / girls abandoned by parents;
- Girl who is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or other illegal act / for unconscionable gains;
- Girls who are found vulnerable to drug abuse / trafficking;
- Girls who are victims of natural disasters, armed conflict and civil commotion, such as communal violence.

There is no data available of girls who are within the juvenile justice system under these categories. Such data is essential to develop preventive measures that specially address vulnerabilities faced by adolescent girls.

In the provisions dealing with institutions for the residence of the juveniles, there is an acknowledgment of specific needs of juvenile girls. The Central government rules under the Act clearly provide for setting up observation / special homes / children’s homes / shelter homes separately for boys and girls. Further, residential facilities are to be provided in accordance with categories of age. The Rules provide for special provisions for girls after their release from an institution under this law. After the release of a juvenile in conflict with the law, the Officer-in-charge of a girls' institution may, subject to the consent of the girl and the approval of the competent authority, help the girl with her social re-integration by way of sending a girl above the age of eighteen years to an after-care programme or, helping her with some vocation or gainful employment or, helping her settle into family life. Where a girl has no place to go after release and requests for stay in the institution after

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30 Rule 16(1), Rule 29, Rule 30(4) of the Rules under the Juvenile Justice (Care and Protection of Children) Act 2000 (56 of 2000) (as amended by the Amendment Act 33 of 2006) to be administered by the States, notification of the Ministry of Women and Child Development, dated 26 October 2007;
31 Ibid, Rule 16(2), Rule 29(1)
32 Ibid, Rule 17(9)
the period of her stay is over, the Officer-in-charge may, subject to the approval of the competent authority, allow her stay till the time some other suitable arrangements are made. Institutional management may involve conducting a search of newly-admitted juveniles, in which case, girls can be searched only by female staff, with due regard to decency and dignity of the juvenile. Provisions also exist for action against those who abuse or exploit juveniles within the institutions, including sexual abuse.

Role of the Media
Visual and print media is prohibited from disclosing the name, address, and any other particulars identifying the juvenile/ a photograph of the juvenile pending inquiry, except if competent authority feels disclosure is in the interest of the juvenile. However, the law does not prevent the media from reporting on the conditions prevailing in a childcare institution, on the contrary such reporting is essential in the interest of children incarcerated in institutions and having no contact with the outside world.

D. CRITIQUE OF THE LAW
Various Indian authors have critiqued the law and highlighted its shortcomings. This law has been critiqued for its non-conformity to international standards as well as constitutional principles, both in the formulation of JJA as well as in its implementation. A major critique of the law is its flawed approach to juvenile justice. Since the Indian law is an offshoot of the criminal justice system, its treatment of juveniles is marked by a tension between the protective approach of juvenile justice and the traditional (punitive) approach of addressing crimes. Further it has been pointed out that there is an inherent tension exists between the protectionist approach, couched in the language of 'best interests' - where adults determine the best interest of the juvenile - and the right to participation - where the child's opinion is heard and given due weight - which is advocated by the Child Rights Convention. Additionally, it has been said that the JJA has completely ignored the fundamental principle of right to participation, and provides no space for expression of the juvenile's opinion at the various stages of the interface between the juvenile and the system. The JJA has also failed to incorporate some important principles in international law such as the prohibition against torture, cruel, inhuman or degrading treatment, prohibition from arbitrary / unlawful deprivation of personal liberty, and detention as a measure of last resort and for the shortest period of time.

Right to maintain contact with his / her family members through correspondence and visits, and the right to privacy have also been violated through the state rules formed under the JJA. It has been pointed out that the Act also does not cast any obligation on the part of the state, and that a rights

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35 Ibid, Rule 17 (13)
34 Ibid, Rule 50(7)
36 Ibid, Rule 60
37 For more details, see Bajpai, G.S. (2006), pp. 4
38 The child under Art 12 has the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child
39 For more details, see Narain, Arvind, The Juvenile Justice Act 2000: A Critique
40 Art 37(a), Convention on Child Rights
41 Art 37(b), Convention on Child Rights
42 Ibid
43 Convention on Child Rights, Art 37( c) reads ...the child shall have the right to maintain contact with his or her family through correspondence and visits save in exceptional circumstances.
44 Embodied in Article 16 of the Convention on Child Rights
45 Arvind Narain points out that the Karnataka Rules restrict access of the family to meet the juvenile to once a month, and gives power to the superintendent to peruse and destroy letters that he / she finds objectionable. Through such provisions, 'exceptional circumstances' provided for in the Convention are converted into a rule applicable in all circumstances. Narain, Arvind. The Juvenile Justice Act 2000: A Critique
based perspective, is a missing dimension in this law - making juvenile justice more of charity than a commitment.\textsuperscript{46}

**A Gender Analysis of JJA**

The law, as a whole, views all children / juveniles as a homogenous group, and therefore lacks a gender perspective. It is not informed by an understanding that girls and boys have different pathways to entering the juvenile justice system, and that the needs of girls are not identical to that of boys while they are within the system. The particular vulnerability of girls due to the forms of abuse they emerge from (such as trafficking, neglect and sexual abuse within the family and forced child marriages) prior to entering the juvenile justice system, has not been recognized. The failure to recognize that the operation of patriarchal values contribute to root causes for girls to be in situations that require care and protection' leads, consequently, to a failure to adequately address specific needs of girls within the juvenile justice system - including psycho-social and trauma counselling, as well as needs related to sexual and reproductive health.

Moreover, the potential vulnerability of girls to various forms of abuse while being in contact with the police and other officials related to administration of juvenile justice requires to be acknowledged and addressed by the law. While there are some measures provided to protect girls from a potential threat to physical and mental integrity while they reside in institutions under this law, so that they are not re-victimised (discussed in the section above), the provisions seem like mere lip service when tested against the ground reality and the horror of abuse that girls undergo in these 'protective' institutions. This is discussed in detail below. Another aspect is the type of vocational training that is provided to girls by child care institutions. There are no provisions in the law or rules under the JJA to prevent vocational training to girls that would perpetuate gender stereotyping of work - such as training in cooking, papad-making, pickle-making, tailoring, embroidery, cleaning and house-keeping.

One redeeming feature of the law, from a gender perspective, is that it attempts to prevent destitution of girls, after they are 'released' from the institutions, by making provisions for their continued stay in the institution or by sending them to after-care institutions. Such provisions would contribute to reducing their consequent vulnerability to abuse and violence, if the girls opt for continuing their residence in such institutions, which, to a large extent, depends on the quality of administration of juvenile justice institutions.

**E. POOR IMPLEMENTATION OF THE LAW**

There are serious gaps between the spirit and provisions of the law, and their implementation, as reflect in ground realities. The Indian government has acknowledged this fact, and observed as follows:

> The Juvenile Justice (Care and Protection of Children) Act, 2000 has envisaged a strong juvenile justice system for protection of children in conflict with the law and in need of care and support. However, there are shortfalls in enforcement, instituting child friendly procedures and ensuring minimum standards of care and protection. There is thus a need for strengthening the juvenile justice system, reviewing existing legislative provisions and making suitable amendments for making these child friendly, ensuring implementation of laws in delivering speedy justice to child victims and significantly improving the delivery of care, support and rehabilitation services to children. Efforts would need to be made for building capacities of child protection functionaries at all levels, promoting non-institutional care and at the same time improving the standards of institutional care.\textsuperscript{47}

\textsuperscript{46} Ibid

\textsuperscript{47} Report of the Five Year Strategic Plan 2011-2016, Ministry of Women and Child Development, Government of India, p. 42
In another document, the Ministry of Women and Child Development, Government of India, has candidly pointed out flaws in implementation in the following manner:

"The situation of children in conflict with the law is further aggravated by insensitive police dealings, long delays in judicial processes including pendency of cases before the Juvenile Justice Boards (JJBs), an inadequate rehabilitation mechanism and hardly any initiatives of after care and follow up, even though mandated by law. We need to take cognizance of the fact that many of the children apprehended are working children, very often rounded up for theft and robbery, so that police action can be demonstrated. There is need to develop effective rehabilitation plans especially for children in conflict with law, as these children return to their homes to face the same pressures, with no new skills and increased police harassment."  

Authors point out that some of the most serious and systematic abuse against juveniles are in relation to the violation of right to personal liberty, in the name of providing proper care, protection and treatment by catering to their developmental needs. Procedural guarantees such as right to speedy trial are not effectively implemented; although the law, in S. 14, states that the enquiry has to be conducted within a period of four months, in practice, this does not happen. Since the juvenile justice system in India thrives under the shadow of the adult criminal justice agencies and institutions (such as the police and magistrates), it is difficult to shake off the criminal justice approach to juveniles. Moreover, the police lacks proper perspective, training and orientation, leading to apathy, indifference and dereliction of duties by the police in handling juveniles. As a result violations of the law by the police have been reported, such as bringing the age of juvenile into the adult range while writing the FIR, and handcuffing and keeping the juvenile in police lockup. A case in point is the conviction of Ramdeo Chauhan, who was punished with death penalty despite uncertainty regarding his age. Another example is that in Delhi, reportedly at least 114 juveniles were lodged in the jail between October 2010 and August 2011. This fact came to be known through an application filed under the Right to Information Act through the initiative of HAQ Centre for Child Rights. The Supreme Court has clearly placed the onus of verifying the age on the magistrates. Due to their failure to verify the age, juveniles have been tried, convicted, incarcerated in prisons, with some being sentenced with death penalty and placed on the death row.

The status of implementation of various institutions envisaged under the Act indicate that overall, there has been a scant attention to issues of protection of juveniles, resulting in scarce resources, minimal infrastructure, and inadequate services to address the concerned issues. Contrary to provisions of the law, the special juvenile police unit does not exist; police officers are often designated to handle juvenile cases without any training or perspective-building. It is for this reason that the Supreme Court passed an order in October 2011, directing that one police officer "with aptitude and appropriate training and orientation" in every police station be designated as the juvenile or child welfare officer, who will handle the juvenile in coordination with the

57. Ibid
59. Raza, Danish (2012)
60. GopinathGosh vs. The State of West Bengal AIR 1984 SC 237: 1984 Supp (1) SCC 228
police. Experts have found the implementation of the law weak in many states including West Bengal, Maharashtra and Delhi. The situation in Maharashtra is deplorable, leading to the filing of a public interest litigation in the Bombay High Court, asking for a proper implementation of the JJA. A report highlights the deplorable condition of juveniles in conflict with the law in Haryana, where they are denied access to justice as the Homes face logistical and financial problems in producing the juveniles before the Juvenile Justice Boards in various districts of the state.

The gaps in implementation highlighted above are only the tip of the iceberg, and is indicative of larger malaise of systemic failure underlying the juvenile justice system and ways in which rights of juveniles are systematically undermined by the system. The higher judiciary has been proactive in addressing the lack of implementation of the law. The Supreme Court has observed that the implementation of the JJA is poor. In Sampurna Behurav Union of India and Others, the Supreme Court has been monitoring the implementation of the JJA in various states and union territories and passed several orders for its implementation. In September 2011, the National Legal Services Authority issued guidelines for legal aid in Juvenile Justice Boards and for training of police on juvenile justice, in accordance with the directions of the Supreme Court in Sampurna Behura’s case.

F. POOR IMPLEMENTATION OF THE LAW & ITS RAMIFICATIONS ON ADOLESCENT GIRLS

While these gaps in implementation of the law impact all juveniles including girls, there are specific aspects of poor implementation that disproportionately affect adolescent girls. Some of these are highlighted below:

**F1: Inadequate Infrastructural Facilities**

The findings of a 2011 study of 185 child care institutions indicate that only 16 (8.65%) are specifically for care and protection of adolescents. This indicates a dearth of institutions that address adolescents’ specific needs. Adolescent girls being a smaller percentage of the total adolescent population within the juvenile justice system, their rights are more likely to be ignored than addressed, and their specific needs made invisible. A government-initiated evaluation study conducted on 36 short stay homes for women and girls across 13 states, highlighted issues related to the functioning of the Homes including:

- Some of the randomly selected Short Stay Homes were found to be dysfunctional and defunct in reality, while, according to the list provided by Department of Women and Child Development, these were functional. The Programme Evaluation Organization (PEO) recommended the Department to examine if such defunct Short Stay Homes are still receiving government grants.

- In some cases, the organizations running the Homes are not the same NGOs which have been authorised to run the Homes. It is not clear as to what terms and conditions govern the relationship between the two

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56 Sampurna Behurav Union of India and Others, order of Justices R.V. Raveendran and A.K. Patnaik, dated 12 October 2011
57 Ibid
60 Ibid
organizations, but the PEO recommended that there was a need to ensure that sub-contracting does not take place.

- The inmates were not provided with proper medical facilities by the Homes during their stay, and medical examinations and vaccinations on admission to the Home as required.

- Board and lodging facilities were found to be more or less satisfactory, except in a few cases. Some Homes were located in remote areas due to low rental provisions, and in some others, rooms were congested / over-crowded and lacked regular maintenance. Inadequacy of resources was stated to be the primary reason for this.

- A majority of the Short Stay Homes were operating independently. Only a few have made efforts to establish linkages with government Departments/agencies.

- The establishment cost of the Short Stay Homes is on the high side, even though the staff are poorly paid.

- The NGOs running the Homes have complained of delay in the release of government grants, excessive procedural requirements, complicated accounting system and inadequate government response to their grievances.

- For the majority of the Homes, the Home Committee (a monitoring / supervising mechanism) was not functional. Though the guidelines stipulate that an officer of the Department of Social Welfare of the State Government should oversee the functioning of the Homes, this is not being complied with.

- The existing monitoring and inspection system is cumbersome and ineffective. A joint inspection team of officers of the Centre and States should examine the activities of a voluntary organisation in a broader framework of its contribution and impact in the context of the scheme and not depend on the reports prepared by the district level officers who may not be fully aware of the objectives sought to be achieved.

Another study, focussing on child care institutions in Karnataka, some of the girls' Homes in the state were evaluated. The study found that the Homes were marked by absence of necessary staff including cooks, vocational trainers and educators, and facilities for care and protection.\(^{64}\)

**F2: Non-Registration under the Act**

A study of 185 child care institutions located in 19 states and one Union Territory covered by the JJJA upto 2011, inter alia, highlights the following:\(^{65}\)

- Though the law prescribes for children's homes that are government-run and those run by voluntary organizations that are duly certified by the government, to be registered under S. 34(3) the Act within six months from the date of commencement of the law, this is not being implemented in reality. Data indicate that only 47 government-run and 76 NGOs-run child care institutions (123 in all / 66.49%) were registered under the Act;\(^{66}\) some institutions were not even aware about the requirement to register under the JJJA although they were running children's homes for six to seven years.\(^{67}\)

- Government and voluntary organizations carrying out activities related to protection of women's and children's rights are required to obtain a licence from the Department of Social Welfare by registering under the Orphanage and Other Charitable Homes (Supervision and Control) Act 1960. The aim of this procedure is that such institutions have to provide for the safety and security of the inmates, and undertake to provide facilities related to health, education and vocational training as per provisions of the Act. The study highlights that out of 185 institutions, 47.03% were not registered

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\(^{64}\) Asian Centre for Human Rights (2012b), pp. 11-17.

\(^{65}\) Ibid

\(^{66}\) Ibid, p. 23

\(^{67}\) Ibid, p. 32
under this Act, and that 20.54% were not aware of this Act or their registration status under the same. 68

According to a report of the Union Ministry of Women and Child Development, there are at least 638 homes (meant for short and long stay) across the country registered under the Juvenile Justice Act 2000 (JJ Act). More than 29,000 children live in such homes. But there is no data on the number of homes not registered under the JJ Act. 69 The Asha Bajpai committee, formed on the order of the Bombay High Court in 2010, did a survey of 23 Mumbai Development Corporation homes. The committee noted that over 59 per cent of MDC Homes in the State were not registered under the Juvenile Justice Act, 2000. 70 The report also pointed to the fact that the government provides grant-in-aid to homes without the requisite registration as per law, and as per the requirements of the state department of women and child development. In Haryana, as many as 118 shelter homes for women and children - out of which 105 are for children - have been found to be operating without registration or any form of accountability. 71

The problem of non-registration of child care institutions is more than a mere administrative / procedural lapse. The JJ Act, 2000 and Rules demand quarterly inspections in child care institutions or homes by the inspection committee, monthly meetings of management committees, and quarterly inspection by Child Welfare Committee members. Not registering a home under the JJ Act allows a home to escape such scrutiny. This has grave implications for the rights of adolescent girls who reside in them. A case in point is the abuse of girls in 'Apna Ghar', Rohtak, discussed below.

F3: Abuse of Girls in Child Care Institutions

There have been a spate of incidents of sexual abuse and exploitation in child care institutions, escape of inmates due to the torture and inhuman conditions within these institutions as well as suicides by inmates. 72 While acknowledging the fact that incidence of mental and physical abuse in such institutions is not confined to girls, and that there is substantial harm caused to male juveniles as well as male children in such contexts, for the purpose of this book, the focus will be on abuse of juvenile girls, and the specific physical, mental, social and economic consequences of abuse and exploitation for girls.

A study observes that Observation Homes, Special Homes and Children's Homes have become centres of abuse across the country. 73 The study, which focussed on juvenile homes in Karnataka, highlighted, among others, blatantly violations of law:

- There have been many children missing from the Homes, indicating criminal negligence of the authorities. Among girls, 34 went missing from the Government Bala Mandir in Mysore, 18 from Bangalore, 11 from Bijapur, and nine each from Tumkur and Hubli - a total of 81 girls across 5 child care institutions in the state; 74

- According to an NGO - Odanadi Seva Samste - four girls committed suicide at such institutions between February 2005 and February 2011; 75

- Two girls were being kept in a Children's Home for Boys at Chikmagalur. No inspection of this Home had taken place between 2009 and 2011; 76

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68 Ibid, p. 33
69 Danish Raza, 'Crying Shame: Sexual Abuse of Children in Shelters, Firstpost.com, 19 June 2012
70 Ibid
71 '118 Children, Women Shelter Homes in Haryana are illegal', The Indian Express, 5 July 2012
73 Asian Centre for Human Rights (2012b), p. 1
74 Ibid at p. 7
75 Ibid
76 Ibid at p. 11
One of the male members of Child Welfare Committee (CWC) II of the Bangalore Urban district - Balakrishna Masali - had been found guilty by the Karnataka State Commission for Protection of Child Rights (KSCPCR) of molesting four minor girls in their teens, by taking advantage of his position. KSCPCR had conducted an inquiry, where the four girls testified to his molestation and sexual harassment in the privacy of his cubicle. The KSCPCR recommended suspension and inquiry under the Juvenile Justice Act. Based on this, the state government, on 8 September 2010, issued an order restraining him from attending sittings of the CWC. No further information is available on action taken subsequently against him.77

In February 2012, 42 children - 19 girls and 23 boys, all between the ages of 8 and 18 - were rescued from a home run by an NGO - Church of Christ in Bangalore - after it was brought to the notice of the concerned authorities that the girls had been physically and sexually abused. Members of the Child Welfare Committee found visible marks of injury on the girls. Two officials of the home were detained by the police for these acts.78

The issue of juvenile girls missing from the institutions is a matter of grave concern, as there is a possibility of them becoming victims of trafficking for forced labour or sexual exploitation, as well as for illegal organ transplant and egg (ova) donation rackets. It is further reported that the Karnataka State Department of Women and Child Development has done little except mechanically lodge 'missing complaints' in police stations, and the police take no action on such complaints.79

The rampant abuse of inmates in 'Apna Ghar' - a shelter home in Rohtak, Haryana, is an illustrative example of the vulnerability of girls in child care institutions. The home housed over 100 inmates, out of which over 75 were girls. Sexual abuse, forced stripping, pornography and even forced abortions were common in the shelter home, according to a four-member committee set up by the Punjab and Haryana High Court.80 Every inmate, irrespective of age, was forced to consume liquor at night, especially on Holi, and the caretakers had reportedly applied holi colours on the girls' private parts. The inmates were reportedly forced to perform naked yoga, dance naked, have oral sex, and were victims of forced prostitution. Haryana's police officials are reported to have frequently visited the Home and abused the girls, with the help of Jaswanti Devi, who ran the institution.81 The girls said that Jaswanti Devi would drug them, take them from Rohtak to Delhi and Chandigarh at night for prostitution. Those who resisted were reportedly stripped naked and forced to stay naked. Two of the inmates - a physically challenged and a mentally challenged girl - reportedly became pregnant due to the rapes. The person in charge of the Home treated them with extreme brutality in order to abort the foetus. One of the two girls is said to have been repeatedly raped by several men and impregnated twice.

The sexual abuse of girls in the two Homes in Karnataka and 'Apna Ghar' in Rohtak are only an indication of the rampant abuse that girls undergo in this institution. These are indications of systemic failure and state apathy and culpability for such gross violations. Experts say that for every reported sexual abuse, there are at least ten unreported incidents, as the events get highlighted only when an insider alerts the authorities or an exceptional event exposes the perpetrators.82 In the case of Apna Ghar, the abuses were

77 Ibid at p. 6.
78 'NGO Officials Detained for Sexually Harassing Children', The Times of India (online), 1 March 2012; discussed in report of Asian Centre for Human Rights, ibid, at p. 6.
82 Ibid.
brought to light by three inmates who escaped and narrated their horrific experiences. In another incident - the medical examination of a 11-year old girl who died at Arya Orphanage in Delhi in December 2011 confirmed rape. Experts say that victims of sexual abuse in institutions do not report these incidents because they know that nobody will come forward and stand by them and that the institution is the only available support for their survival and existence.  

**F4 : Lack of implementation of Monitoring Mechanisms**

Mechanisms for monitoring and supervising administration of juvenile justice, including administration of child care institutions, exist on paper, but are rarely implemented. These include surprise visits and inspections by members of Child Welfare Committees.

In a clear indication of state apathy and abdication of its responsibility towards juveniles, in October 2010, the Karnataka government took a regressive step of prohibiting CWC members from visiting child care institutions when they were not holding a sitting, without the prior permission of heads of such institutions. This is a gross violation of provisions of the Juvenile Justice Act as well as the Karnataka Rules made under the Act in 2010, and prevents monitoring and supervision rather than encouraging it. Further, a study observes that in Karnataka, many Homes under the JJA have not had an inspection during 2009-11, including the Government Juvenile Home for Girls in Bagalkot.

In the present state of affairs, the institutions under the Juvenile Justice Act certainly do not provide a conducive atmosphere for any adolescent girl's rehabilitation. Adolescent girls' rights can be better promoted if persons who care for them ensure that they are not institutionalised, and seek their prompt release if institutionalised, by understanding and using the contours of law.

**G. POLICY RESPONSES OF THE INDIAN GOVERNMENT**

An exercise on child budgeting carried out by the Ministry of Women and Child development revealed that total expenditure on children in 2005-2006 in health, education, developmental and protection together amounted to merely 3.86%, rising to 4.91% in 2006-07. However, the share of resources for child protection were an abysmal low of 0.034% in 2005-06 and the same in 2006-07. The government realised the urgent need for increasing expenditure on child protection, and that the neglect of child protection issues violates not only children's and adolescents' rights, but also increases their vulnerability to abuse, neglect and exploitation. There was a further realization among policy makers that child-friendly policies and legislations for children have on the whole suffered from weak implementation, owing to scant attention to issues of child protection, resulting in scarce resources, minimal infrastructure, and inadequate services to address child protection problems. It recognizes the need to move away from institutionalized care, towards alternatives such as family and community-based protection.

**Child Protection in 10th Five Year Plan 2001-2006 and 11th Five Year Plan 2007-12**

In the 10th Five Year Plan, adolescent girls have been bunched with women and children, except in case of nutritional needs. Only a passing reference was made to the Juvenile Justice Act and the need for proper implementation of the same. The focus on adolescents in

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83. Ibid
84. "Curts on CWC Members Worry Child Rights Activists", The Hindu, 1 November 2010; its implications are discussed in the report of Asian Centre for Human Rights, ibid
87. Ibid
88. UNFPA
general, and girls in particular, was lacking.

The Ministry of Women and Child Development (MWCD), in its strategy paper for the 11th Five Year Plan, viewed child protection as an essential component of the country's strategy for child development. The 11th Five Year Plan recognizes 'child protection' as a key area of intervention, through preventive and protective approaches. The Eleventh Plan promises to review the conditions of State-run homes and fund their development through the new ICPS scheme. It seeks to uphold the basic mandate of rehabilitating and reintegrating children in conflict with law, by urging training for law enforcement and child welfare officers. The Eleventh Plan further states:

"The Plan will stress on the protection of children from violence, abuse, and exploitation inside institutions, and will adopt a paradigm that recognizes that children in conflict with law also need care and protection. The challenge for the Eleventh Plan is to condense the long judicial process for children, appoint more child-friendly officers, and ensure the proper implementation of the JJ Act."\(^{30}\)

In short, it makes a paradigm shift in adopting a rights-based approach and viewing children as agents, not recipients. However, the adolescent and gender perspectives on juveniles in need of care and protection, and juveniles in conflict with the law, are still absent from this Plan, through the use of the gender-neutral term 'child'.

**National Plan of Action for Children 2005**

In the section on the girl child, only a fleeting reference is made to the Juvenile Justice Act.\(^{31}\) In the discussion on adolescents there is no mention at all of juvenile justice. In the chapter on child protection, the 2005 Plan addresses both sets of children - those in difficult circumstances as well as those in conflict with the law. There are many strategies outlined in this section, that have not been followed even seven years after the Plan of Action was formulated. These include preventing children from being lodged in prison, setting up Juvenile Police Units in every district, upgrade basic infrastructure in all juvenile justice institutions, and regular review of treatment of juveniles by state and national authorities.\(^{32}\) The discussion on juvenile justice in the 2005 Plan does not benefit from a recognition that juveniles are not a homogenous community, but have differing needs and experiences based on sex and age.

**MWCD's Five Year Strategic Plan 2011-2016**

In the Five Year Strategic Plan, the Ministry has stated that it would focus on the effective implementation and consolidation of the Integrated Child Protection Scheme (ICPS). Further, it would focus on promoting quality non-institutional care, professionalized institutional support, the expansion of Childline and the development of a credible database on missing children and those in difficult circumstances. The Ministry also plans to increase its efforts towards training and capacity building, monitoring and evaluation, research, advocacy and coordination related to child protection.\(^{33}\)

**Existing Mechanisms for Child Protection**

Existing mechanisms for protecting children within the juvenile system, and preventing them from entering the juvenile system are as follows:

- A Programme for Juvenile Justice for children in need of care and protection and children in conflict with law. The Government of India provides financial assistance

\(^{30}\) Planning Commission, Government of India (2008), Eleventh Five Year Plan 2007-12, para 6.147, pp. 216-217

\(^{31}\) Ibid


\(^{33}\) Ministry of Women and Child Development Five Year Strategic Plan 2011-2016, para 5.4.
to the State Governments/UT Administrations for establishment and maintenance of various child care institutions. Financial assistance is based on proposals submitted by States on a 50-50 cost sharing basis.

- An Integrated Programme for Street Children without homes and family ties: Under the scheme voluntary organizations are supported to run 24 hours drop-in shelters and provide food, clothing, shelter, non-formal education, vocational training, health services, recreation, counselling, guidance and referral services to them.

- CHILDLINE Service: these are for children in distress, especially children in need of care and protection.

- ShishuGreh Scheme- the scheme aims at caring for and protecting orphans/abandoned/destitute infants or children up to 6 years and promote in-country adoption for rehabilitating them. The effective implementation of this scheme has the potential to prevent girls from entering the juvenile justice system in future years.

- Scheme for Working Children in Need of Care and Protection for children working as domestic help, at roadside dhabas, mechanic shops, etc. The scheme provides for bridge education and vocational training, medicine, food and recreation.

- Pilot Project to Combat the Trafficking of women and Children for Commercial Sexual Exploitation in source and destination areas for providing care and protection to trafficked and sexually abused women and children. Components of the scheme include networking with law enforcement agencies, rescue operation, temporary shelter for the victims, repatriation to hometown and legal services, etc.

H. CONCLUSION

The law on juvenile justice is inadequate on many counts. It is clearly lacking in a gender perspective. The law is not informed by ways in which adolescent girls enter the juvenile justice system and their specific experiences, needs and vulnerabilities while within the system. Implementation of the law is very poor, particularly in aspects of monitoring and supervision of institutions established under the law. This has serious consequences for the physical and mental integrity and development of girls within the system. There has hardly been a case of prosecution and conviction of officials involved with administration of juvenile justice system, although physical and sexual abuse of adolescent girls living in child care institutions has been rampant. As the many instances highlighted in this chapter illustrate, abuse and exploitation of adolescent girls in juvenile homes has been systemic and structural in nature, and also carries rampant impunity.

The MWCD acknowledges that factors affecting safety and protection of children, which includes adolescent girls, are: inadequate implementation of the JJA 2000; unsafe family environment; harmful traditional mindsets; and discrimination against the girl child.\(^\text{44}\) However the policies do not indicate adequate focus on preventive measures in this regard.

Compilation of data with regard to juvenile girls - both those in conflict with the law as well as those in need of care and protection - is poor; in fact, there is almost no composite data available in the public domain on adolescent girls in need of care and protection. Today, we do not have a clear idea as to how many girls find their way into the system due to neglect, abandonment, abuse and exploitation. Unless the government makes a serious effort at instituting studies and compiling data with regard to adolescent girls within the juvenile justice system, it is close to impossible to respond positively and in a planned manner to prevent adolescent girls from entering the system, and to protect and promote the rights of those who are present within the system. This aspect is discussed further in Chapter 10 of this book, on state responsibility.

In the budgets as well as in the policies/schemes/programmes outlined above, there is no specific component focussing on protective and preventive aspects related to adolescent girls. This indicates a weak resolve on the part of the government at prevention, particularly of adolescent girls who are a vulnerable group. When schemes for children/adolescents include adolescent girls, they do not necessarily address gender-specific issues of girls. When schemes for women are implemented, they do not adequately respond to age-specific issues of adolescent girls. Clearly defined component and budget for addressing issues of adolescent girls' interface with the juvenile justice system is urgently warranted.

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Chapter 10
State Responsibility

The preceding chapters have discussed the present situation of adolescent girls, their specific rights, the barriers they face in enjoyment of their human rights as well as the response of the state through policies, programmes and laws. As emphasized in previous chapters, state responsibility towards adolescent girls extends beyond formulation of laws, policies and programmes. This chapter attempts to highlight the entire gamut of state responsibilities towards adolescent girls on each of the topics discussed in this book - education, health, food and nutrition, work, marriage, violence and juvenile justice. State responsibility will be discussed using an international human rights law framework. It will draw upon general recommendations as well as country-specific recommendations issued by treaty bodies, and other mechanisms such as the UN Special Rapporteurs. The discussion will hopefully pave way for readers to evaluate the extent to which the Indian government has discharged its responsibilities as mandated by law, and determine the roadmap to further realization of adolescent girls’ rights.

A. FRAMEWORK OF STATE RESPONSIBILITY UNDER INTERNATIONAL HUMAN RIGHTS LAW

International human rights law has, on one hand, laid down rights of the people and, on the other hand, the corresponding obligations of the state. The discussion below highlights
some concepts and standards related to state obligation that form the international human rights law framework, which are relevant to discussing adolescent girls' rights in India.

A1. Equality and Non-Discrimination

A fundamental aspect of states' obligations is that of non-discrimination. In the context of implementing and enforcing human rights, the principle of non-discrimination means that everyone is entitled to the enjoyment of human rights irrespective of his or her colour, gender, religion, ethnic, social or national origin, political or other opinion, property, birth or other status. It therefore prohibits distinctions, exclusions, restrictions and limitations in the execution of a state's obligations that are not based on the nature of the obligation. With regard to adolescent girls, this means that the state cannot discriminate against adolescent girls vis-à-vis people of other age groups or boys.

States are obligated to

- eliminate discrimination by abolishing without delay any discriminatory laws or regulations; and
- eliminate discrimination by refraining from discriminatory practices in implementing laws, regulations and programs.

The non-discrimination principle for women and girls includes affirmative action to eliminate conditions that contribute to discrimination. Current international understanding of principles of equality is reflected in the provisions of the Declaration of Principles of Equality. The Declaration defines equality as the right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life.

Right to equality, guaranteed in Article 14 of the Indian Constitution, has been a subject matter of intensive examination by the Supreme Court through various judgments. The judgments lay down that although Article 14 forbids class legislation, it does not prohibit reasonable classification for the purpose of legislation, on the fulfilment of certain conditions. In Indian jurisprudence, the need for affirmative action in the form of reservations or other forms of positive preference to disadvantaged groups have been regarded as a facet of non-discrimination, and a possible means of achieving equality rather than its breach. This indicates an emphasis on substantive equality.

A2. State Obligation to Respect, Fulfil & Protect

Under international human rights law, states have three levels of responsibilities, namely:

- **Obligation to respect** - In its obligation to respect, the state must abstain from any conduct or activity of its own that violates human rights. This prohibits the state from interfering directly or indirectly with people's enjoyment of their rights. In other words, the state must not act in a way which violates women's human rights. It includes respecting efforts that people themselves make in realizing their rights. The obligation to respect

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1. University of Minnesota - Module 9
2. Ibid
3. This declaration was agreed upon by a group of experts at a conference entitled "Principles on Equality and the Development of Legal Standard on Equality" held on 3-5 April, 2008 in London. Participants of different backgrounds, including academics, legal practitioners, human rights activists from all regions of the world took part in the Conference. The Declaration of Principles on Equality reflects a moral and professional consensus among human rights and equality experts.
6. UNIFEM, '30 Years of United Nations Convention on the Elimination of All Forms of Discrimination Against Women', (hereinafter referred to as the UNIFEM report)
also entails enacting laws and policies recognizing women’s human rights, which set standards of acceptable and unacceptable behaviour, complemented by condemnation of violations of women’s human rights by persons in power. Needless to say, violations ought to be addressed not only through penal law which punishes the perpetrator, but also by civil laws which provide financial remedies to the victim/survivor.

- **Obligation to fulfil** - This obligation requires states to take appropriate measures to ensure that the human rights standard is obtained. Under this type of obligation, states are mandated to take legislative, administrative, budgetary, judicial and other steps towards realization of the standard of human rights. It entails creating an enabling environment including institutional frameworks, building institutions, formulating laws and norms, facilitating access to resources and rights and enabling girls to enjoy their human rights in reality. The obligation to fulfil includes an obligation to facilitate as well as provide.

- **Obligation to protect** - The state is duty-bound to stop others from interfering with or violating people’s rights, primarily through effective regulation and remedies. The obligation to protect includes state’s duties to prevent, investigate, punish, provide reparations and ensure redress for the harm caused by perpetrators, irrespective of whether they are state or non-state actors. This obligation includes prevention of violations by non-state actors, including individuals, groups, institutions and corporations. This obligation also entails creation of enforceable mechanisms that can protect the standards, laws and policies. In addition, the state is also obliged to administer an adequate and efficient system of police, investigation, prosecution, law enforcement and civil and criminal justice.

In short, under the principle of state obligation, states parties must

- Prevent discrimination
- Prohibit discrimination
- Identify and redress
- Impose sanctions against discriminating acts
- Promote rights and equality through proactive measures
- Accelerate de facto equality

In the process by which the state carries out the three types of obligations stated above, the state

a) Cannot discriminate in meeting its obligations;

b) The progress must occur at an adequate rate that shows commitment;

c) People must be able to participate in realizing their rights; and

d) There must be an effective remedy for violations of state obligations.¹⁰

A3. Due Diligence

The concept of due diligence is a yardstick that measures the extent of discharge of the three types of state obligations outlined above. It describes the minimum acceptable level of effort which a state must undertake to fulfil its responsibility to protect individuals from abuses of their rights.¹¹ The extent to which a state is duly diligent is assessed through the steps it takes in relation to each level of obligations. Where the human rights violation in question is not directly imputable to a state, the state may still be held responsible, not because of the act itself, but because of the lack of due diligence to prevent the violation or respond to it as

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¹⁰ Raworth, Kate (2004)

¹¹ Amnesty International USA, ‘Domestic Violence as Torture!’
required by law. The UN Special Rapporteur on Violence Against Women has developed a checklist of considerations for determining State compliance with obligations of due diligence. This includes:

- Ratification of international human rights instruments;
- Constitutional guarantees of equality for women;
- The existence of national legislation and/or administrative sanctions providing adequate redress for women victims of violence;
- Policies or plans of action that deal with the issue of violence against women;
- The gender-sensitivity of the criminal justice system and police; accessibility and availability of support services;
- The existence of measures to raise awareness and modify discriminatory policies in the field of education and the media, and
- The collection of data and statistics concerning violence against women.

B. ADOLESCENT GIRLS & OBLIGATIONS OF THE INDIAN STATE

B1: Generic Obligations

Adolescent girls - An Invisible Group: One of the glaring aspects of the Indian state's obligations towards empowerment of adolescent girls is the lack of adequate focus on recognising the needs, discrimination and violation of rights that are specific to adolescent girls, and a resolve to addressing them through a rights-based approach. Most of the policies, programmes and plans of action that have been formulated and implemented by the Indian government are focussed on either the women, child or youth. Adolescent girls' rights are subsumed partially in each of these categories. Examples of this trend are the National Policy for Empowerment of Women 2001 and the National Health Policy 2002. While the policies and plans of action on children do deal with the 'girl child' in some detail, these standards are not easily applicable to adolescent girls. The Draft Policy on Youth 2001, which distinguishes between 'age of maturity' and 'age of adolescence' coupled with a focus on gender inequality is a positive step. The Five Year Strategic Plan 2011-2016, formulated by the Ministry of Women and Child Development, is promising, in that it recognises adolescent girls as a vulnerable group requiring concerted action.

Need for a Rights-based Approach: Policies, programmes and interventions have tended to adopt a welfare approach as against a rights-based approach. In particular, the standards set by the Beijing Platform for Action, which adopt a rights-based approach, have not been integrated adequately into policy planning and programmes. The CEDAW committee had observed this in 2000. The Committee on Rights of the Child also expressed a similar concern in 2004, in relation to the National Policy for Children 1974, National Plan of Action (for Children) 1992 and the National Charter for Children 2003.

In recent times, there is an emerging consciousness of the importance of adopting a rights-based approach, among Indian policy-makers, as reflected in the quote below:

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... it is important to reaffirm a rights perspective as
the philosophical foundation of this document. Adolescents in India have some inalienable rights
as equal citizens and as future adults who are
expected to participate in democratic processes.
Access to good quality education, training and
information on a range of issues, including health
and reproductive rights, is essential to make informed
choices free from influence and coercion. Although the
Convention on the Rights of the Child (CRC)
guarantees children the right to express their views
freely in all matters affecting them, even adolescents
are frequently denied the opportunity to participate
in decision making processes and activities that
affect their lives and future. Privacy and confidentiality
are essential prerequisites to address adolescent
issues especially with regard to reproductive and
sexual health, relationships and emotions. Reaffirmation
of this perspective is necessary if we are to move
away from a welfare orientation to a rights and
empowerment approach.¹⁷

Addressing Discriminatory Social Attitudes: Laws, policies,
programmes and schemes would be unable to benefit and
empower adolescent girls if social attitudes and practices
that either discriminate against, or are harmful to girls, are
in persistence. Patriarchal social attitudes are one of the
root causes for violence and discrimination against adolescent
girls. Such attitudes are manifested in poor value given to
girl children and son preference. It is for this reason that
state obligation also entails the Indian state to address
discriminatory social attitudes and discriminatory traditional
practices through comprehensive public education
programmes to prevent and combat gender discrimination
within the family, in community and by the state. The need
for addressing discriminatory social attitudes has been
repeatedly emphasized by international agencies.¹⁸ However,
government initiatives in this regard are far from adequate.
For example, the 'cradle baby scheme' aims at arresting
the practice of sex-selective abortions and female infanticide
by encouraging families to abandon unwanted baby girls
in state-run orphanages. While it saves the life of such
infants, the controversial scheme simultaneously reinforces
the concept of girls as an economic burden and does not
counter the preferential value attributed to sons. Many
health schemes for adolescent girls are focussed on
reproductive health, reinforcing the idea of girls merely as
future carriers of children. Some judicial pronouncements
on adolescent girls' exercise of agency with regard to
marriage also reinforce and perpetuate patriarchal attitudes.
These are discussed in greater detail in Chapter 7 of this
book.

Anomalies in Definition of the Child: The lack of uniformity
in law in the definition of a child has been a matter of serious
concern. While the Convention on Child Rights defines
'child' as persons below 18 years of age, Indian laws have
defined children differently for varied purposes, including for
education, criminal responsibility, juvenile justice, sexual
consent, labour rights and the cluster of family laws. This
has led to considerable ambiguity, confusion and
contradictions, particularly with regard to adolescent girls.
This is more elaborately discussed in Chapter 3 of this book,
on law and policy framework. The Committee on Child
Rights expressed its concern in this regard, and
recommended to the Indian government that it reviews its
legislation with a view to ensuring that age limits conform
to the principles and provisions of the Convention on Child
Rights.¹⁹

Systematic Research and Data Collection: An aspect of
state obligation entails the state to engage in systematic

¹⁷ Report of Working Group on Adolescents for Tenth Five Year Plan,
Planning Commission of India, p. 20, para 4.2

¹⁸ See for example, CRC: India, 2000 at paras 32-33; CRC: India,
2004 at paras 29-30.

¹⁹ CRC: India, 2000 at paras 26-27
research and collection of data, and use such data to inform future state policies. The Special Rapporteur on Violence Against Women had emphasized this duty of the state in 1999. In 2004, the Committee on the Rights of the Child too had recommended that the Indian state develop a system of data collection and indicators consistent with the Convention and disaggregated by gender, age, social status (Scheduled Castes and Tribes, or religious community), and urban and rural area and make it publicly available. It suggested that this system should cover all children up to the age of 18 with specific emphasis on those who are particularly vulnerable. It further encouraged the State party to use these indicators and data for the formulation of policies and programmes. In 2012, there continues to be a lack of research and data to adequately understand the current situation/status of adolescent girls in their enjoyment of all aspects of their rights - civil, political, economic, social and cultural.

When writing this book, the author faced difficulties in obtaining data pertaining to adolescent girls, particularly on issues of violence. No official data is available on cyber crimes, molestation, sexual harassment in public places and in the workplace, acid attacks and honour crimes against adolescent girls. The author further observed a lack of reliable data on the recent/present health status of adolescent girls, particularly on aspects of mental health. While data has been compiled on educational status of girls, particularly through enrolment and dropout rates at primary and secondary levels, what appears to be missing is data on violence against girls in and around educational institutions, including corporal punishment and sexual assault, and their impact on educational rights of adolescent girls. Data collection and research studies could contribute to a deeper understanding of practices that discriminate against adolescent girls, obstacles that they face in accessing rights and the adequacy of implementation of laws and policies. Data collection and research are tools that squarely fall into the state obligation to 'fulfil', as they would contribute to creating an enabling environment through an impact assessment of laws, policies, programmes and schemes. Additionally, for concerned citizens and groups, budget analysis can be used as a tool for evaluating the state's discharge of its obligations. Budget analysis as a tool for human rights work goes beyond the compilation of numeric or statistical data; it involves the interpretation and use of essential information on resource allocation for analysis or evaluation of official policies and priorities.

Need for Impact Assessment: The Indian state has an obligation to not only formulate and implement laws and policies that intend to empower adolescent girls, but also conduct impact assessments of its legislative reforms, policies and programmes to ensure that measures taken lead to the desired goals. The CEDAW Committee, in 2007, suggested that the government undertake this exercise. Systematic data collection and research are pre-requisites for an impact assessment of laws, policies, programmes and schemes. Social audits to assess if, in reality, the laws, policies, programmes and schemes have benefitted adolescent girls on the ground, are necessary. Impact assessment, which falls squarely into the state's obligation to 'fulfil' human rights of adolescent girls, would enable it to discharge its obligations to both 'respect' and 'protect' adolescent girls' rights.

B2 : Right to Education

The Committee on Economic, Social and Cultural Rights has identified four elements of state's obligation with regard to

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21. CRC: India, 2004 at paras 21-22
22. University of Minnesota - Module 16
education: availability, accessibility, acceptability and adaptability. Accessibility has three categories: non-discrimination, physical and financial accessibility. Acceptability means that the form and substance of education - such as curricula and teaching methods - should be of good quality and culturally appropriate, while adaptability entails a flexibility in the education system to adapt to the changing needs of students, in the best interests of the students.

The gender gap in literacy and education are aspects that are particularly relevant when examining state responsibility towards adolescent girls' right to education. Gender differentials in the enrolment ratio, school net attendance rates as well as drop outs, have been highlighted in Chapter 2 of this book. This situation warrants gender-specific programmes and schemes focussed on adolescent girls, in order that they overcome the barriers faced in accessing education. While primary education has been made free and compulsory, and the Right to Education Act as well as schemes such as Sarva Shiksha Abhiyan address the issue of universal primary education, this only covers the age group of 6-14. Adolescent girls above the age of 14 do not enjoy any right to education under Indian law and policy, thereby diminishing state responsibility towards girls seeking secondary and higher education. Privatisation of secondary and higher education exacerbates the situation, as it increases the potential for commercialisation and profit-motivation at the cost of social benefit - private-public sector partnership is perhaps more desirable.

Adequate budgetary allocation for adolescent girls' education is crucial for the programmes, schemes and interventions to have a meaningful impact. In 2000, the CEDAW committee was concerned that the budgetary allocation for education of girls is still far below India's commitment with regard to the Beijing Platform for Action. It observed:

> The Committee urges the Government to take affirmative action, set a time-frame and provide adequate resources for primary and secondary education so as to give girls equal access to education and eradicate adult illiteracy among women. It calls upon the Government to make primary and secondary education compulsory by introducing and enforcing relevant regulations.

In 2007, the CEDAW committee called upon the Indian government to allocate adequate resources for education of girls in the Eleventh Five Year Plan. The need for data collection disaggregated by sex, caste, minority status and ethnicity, on the enrolment and retention rates of girls at all levels of education and trends over time, has also been emphasized upon. It was further opined that while this is so for data related to all adolescent girls, such data collection also needs to reflect the particularly disadvantaged situation of Muslim girls, and implement the Sachar Committee recommendations in this regard.

The general lack of infrastructure, facilities and equipment, insufficient numbers of qualified female teachers and a drastic shortage of text books and other relevant learning materials persists as a concern area, particularly in relation to adolescent girls. At the same time, the striking disparities in access to education among boys and girls, urban and rural areas, the affluent and poor, and children belonging to scheduled castes and tribes, are also aspects that need to be effectively addressed by the Indian state.

Focussing attention on the quality of education - both formal and informal - is also imperative. Violence or threat of violence against adolescent girls in and around school deter them from accessing

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25. For more details, see Bajaj, Shammi (2012); Prempsai, C.
26. CEDAW: India, 2000 at para 64
27. Ibid at para 65
28. CEDAW: India, 2007 at para 31
29. Ibid at para 33
30. Ibid
31. The Committee on Rights of the Child had expressed its concern with regard to both aspects in CRC: India, 2000 at para 56; CRC: India, 2004 at para 64
education, as discussed in further detail in Chapter 4 of this book. The government's recent moves to outlaw corporal punishment and ragging in educational institutions are positive measures taken in discharge of its obligation to 'protect' adolescent girls' right to education, and to overcome barriers to education that girls face. The government is also reported to be considering extending the coverage of the Right to Education Act to include secondary schooling. Such a move, if undertaken, would immensely benefit adolescent girls. Table 10.1 below highlights some aspects of state obligation towards adolescent girls' education in India.

### Table 10.1: Some State Obligations on Adolescent Girls' Education in India

<table>
<thead>
<tr>
<th>Obligation to respect</th>
<th>Obligation to fulfill</th>
<th>Obligation to protect</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Availability</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State authorities must not prevent adolescent girls from educating themselves through formal/informal means</td>
<td>Adequate budgetary allocation for primary, secondary and higher education</td>
<td>To ensure that adolescent girls are not prevented from attending school – by their parents or others</td>
</tr>
<tr>
<td></td>
<td>Refrain from relinquishing state's obligation towards promoting and protecting adolescent girls' right to education, through privatisation of secondary/ higher education</td>
<td>Effective implementation of Right to Education Act and other laws/administrative measures related to adolescent girls</td>
</tr>
<tr>
<td></td>
<td>Take necessary measures to improve the quality of education and ensure better efficiency in the management of education</td>
<td>Hire qualified female teachers, provide them opportunities for training, curb their absenteeism</td>
</tr>
<tr>
<td></td>
<td>Hire qualified female teachers, provide them opportunities for training, curb their absenteeism</td>
<td></td>
</tr>
</tbody>
</table>

| Acceptability         | State should not prevent teaching topics that the student expresses a need to be taught – including sex education and human rights | Public education programmes to raise awareness of the importance of educating adolescent girls |
|                       | State authorities should protect adolescent girls from possible threat/intimidation by conservative forces, who may oppose certain topics that are taught (parochial forces, religious authorities, fundamentalist forces, upper caste members etc.) |

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32. In September 2012, the Ministry of Women and Child Development proposed banning corporal punishment [of children] and bringing in stringent punitive action against offenders. It has suggested a maximum imprisonment of up to seven years in case they are found guilty of "repeatedly using any punishment in which physical force is used with the intention of causing some degree of pain or discomfort to the child." For more details, see 'Ministry Proposes Ban on Corporal Punishment', The Hindu, 11 September 2012

33. Mukul, Akshaya. 'HRD Moves to Extend RTE to Secondary Level', The Times of India, 31 May 2011

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B3: Rights Related to Work

Chapter 5 of this book has highlighted the fact that in India, adolescent girls work but very often, their work is unrecognized and invisible. Invisibility of the work also implies that there is little possibility for regulating their conditions of work, leaving them more vulnerable for exploitation.

While international efforts are geared towards abolition of child labour, there is also an increasing recognition that in many situations, adolescents work, and hence protective measures need to be put in place. A report of International Labour Organisation (ILO) titled 'Global Employment Trends for Youth' recognised the participation of young persons...
(defined as 15-24 years of age) in the labour force, and highlights the impact of the global economic crisis on youth.

The state is duty-bound to respect, protect and fulfil each person's access to work to earn one's living and the obligation to guarantee that this work can be freely chosen or accepted. General Recommendation 13 of CEDAW focuses on the right to equal remuneration for work of equal value. It observes that even though the principle of equal remuneration for work of equal value has been accepted in the legislation of many countries, more remains to be done to ensure the application of that principle in practice, in order to overcome the gender-segregation in the labour market. It emphasizes the responsibility of states to consider the study, development and adoption of job evaluation systems based on gender-neutral criteria that would facilitate the comparison of the value of those jobs of a different nature, in which women presently predominate, with those jobs in which men presently predominate. Another General Recommendation, founded on the principle that unpaid work constitutes a form of women's exploitation, calls upon states to provide information and statistical data on the social and legal situation of unpaid work of women in family enterprises. It also obligates states to guarantee payment, social security and social benefits for such women. Yet another General Recommendation to CEDAW draws linkages between poverty and unemployment on one hand, and violence against women and girls on the other. It observes that poverty and unemployment increase opportunities for trafficking, and force many women and girls into prostitution, where they are especially vulnerable to violence. It calls upon states to take preventive and punitive measures to overcome trafficking and sexual exploitation. The state's obligation to prevent such forms of violations will necessarily entail eradication of poverty and providing gainful employment to women and girls.

The European Union's directives to its member states on the issue of protecting young people at work as well as protection of pregnant women, women who have recently given birth and women who are breastfeeding, discussed in detail in Chapter 5 of this book, clearly outline state obligations to respect, fulfill and protect rights of adolescent girls and young women at work. While these standards are not directly applicable to the Indian context, the directive gives an indication of the possibilities for the Indian government to bring about a similar directive protecting young people at work, and integrating a gender perspective into the same, so that the specific needs of and problems faced by adolescent girls at work are addressed.

The Indian state is presently grappling with the dichotomy of protecting adolescent girls' labour rights on one hand, and the fall out of the process of globalization on the other, which opts for cheap and exploitative labour. In the context of adolescent girls, some elements of obligations of the Indian state are highlighted in Table 10.2 below.

### Table 10.2: Some State Obligations Related to Adolescent Girls' Right to and Rights in Work

<table>
<thead>
<tr>
<th>Obligation to Respect</th>
<th>Obligation to Fulfil</th>
<th>Obligation to Protect</th>
</tr>
</thead>
<tbody>
<tr>
<td>State must not destroy or obstruct an adolescent girl's opportunity to earn her living - such as by banning night work or work in certain sectors;</td>
<td>State must provide the opportunity to adolescent girls to earn their living: commensurate with their age and capacity to work;</td>
<td>State must prevent adolescent girls' opportunity to work from being destroyed by third parties;</td>
</tr>
<tr>
<td>Provide vocational training that is affordable, for adolescent girls to upgrade their skills;</td>
<td>Provide on-job training to build the capacities of the girls;</td>
<td>Prohibit by law all forms of exploitation of adolescent girls at work, both in public and private sectors, including sexual abuse of adolescent girls;</td>
</tr>
<tr>
<td>Create awareness through the media and other means, of employers' responsibilities towards adolescent girls;</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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34 University of Minnesota - Module 10
35 General Recommendation No. 13 to CEDAW, Eighth session, 1989
36 General Recommendation No. 16 to CEDAW, Tenth session, 1991
37 General Recommendation No. 19, Eleventh session, 1992
38 Ibid at paras 14 and 15
39 Ibid at para 24(g)
State must not deter adolescent girls by complaining about forms of violence, harassment or exploitation at the workplace – by imposing punitive measures on them if they fail to prove their complaints.

Establish working women's hostels for adolescent girls and young women.

Provide for work-related benefits to adolescent girls such as gratuity, annuity, medical insurance, provident fund etc.

Provide access to justice for adolescent girls including creating rights awareness and providing free legal aid.

Create innovative mechanisms for regulating the work environment for adolescent girls in home-based work / work in unorganised sector.

Create safe conditions for night work.

Ensure support systems and services / facilities at workplace and to and from home that are gender-inclusive, and meet the specific needs of adolescent girls, including that of safety and occupational health;

Establishment of creches and day care centres, and provision for breaks for nursing adolescent mothers;

Create a regulatory framework for the public sector and Special Economic Zones in order that adolescent girls may exercise their labour rights in these contexts.

Collect empirical data and initiate research studies to fully understand adolescent girls at work in India, a situation analysis of the same, the problems they face, and formulate laws, policies and schemes using such research findings as the basis.

who are domestic workers.\textsuperscript{40}

Strictly enforce and effectively implement criminal and labour laws, including on minimum wages, equal remuneration for work of equal value, maternity benefits, occupational health and safety, and other aspects of rights at work;

Prohibit and provide remedies for sexual harassment at workplace, including by constituting grievance committees with gender-sensitive persons, and by taking strict action against perpetrators;

Encourage adolescent girls to lodge complaints on exploitation at the workplace, including but not limited to sexual harassment;

Release bonded labourers, repossess them and prosecute persons responsible;

Eradicate child labour, particularly in hazardous industries, and rehabilitate victims including girls;

Ensure prompt and unconditional payment of wages to adolescent girls;

Effectively implement regulatory framework that protects and promotes adolescent girls' labour rights in the private sector and Special Economic Zones.

\textsuperscript{40} In 2007, the CEDAW Committee expressed its concern about sexual abuse of domestic workers, a majority of who were girls. It called upon the Indian government to enforce provisions of the Child Labour (Prohibition and Regulation) Act 1986 to their benefit, and to devise strategies for their rehabilitation including their inclusion in the formal educational system. CEDAW: India, 2007 atparas 48-49

B4: Right to Health, Food & Nutrition

Despite various initiatives of the Indian state towards improving adolescent girls' health, food and nutritional status, through policies, programmes, schemes and laws, issues of concern persist. Increased attention is warranted to female health throughout the life cycle, including in key areas of pregnancy and non-pregnancy related mortality and morbidity.\textsuperscript{41} State efforts in improving housing, environmental sanitation, availability and quality of primary health care, availability and accessibility of safe potable water and food security would contribute substantially to the health and nutritional status of adolescent girls. With regard to health and nutritional status, the extreme disparity between men and boys on one hand, and women and girls on the other, as well as the disparity between girls in rural and urban areas are matters of concern.\textsuperscript{42}

Privatisation of health care diminishes the access of marginalised, underprivileged populations, including adolescent girls, to health care services. The state is squarely responsible for providing adequate budgetary allocation for health and nutrition of adolescent girls.\textsuperscript{43} Apart from suggesting increased allocation of resources to healthcare, the CEDAW committee had expressed its concern in this regard by recommending that the Indian government to monitor privatization of health care and its impact on women and girls. The Committee on the Rights of the Child emphasised on continued resource allocation to the poorest sections of societies.\textsuperscript{44} In order to maximise available resources for health services, as well as improve the reach of such services, a mid-way approach could be adopted, whereby a balance between public and private sector investment in the health sectors is achieved.

Health services should not only be available to adolescent

\textsuperscript{41} CEDAW: India, 2007, atpara 41
\textsuperscript{42} CRC: India, 2000 atpara 48
\textsuperscript{43} CEDAW: India, 2007 atpara 41
\textsuperscript{44} CRC: India, 2000 atpara 51
girls but also accessible - in terms of physical proximity as well as affordability. With regard to certain reproductive health services, an unspoken rule denying abortion and contraceptive services to unmarried girls has been noted, based on conservative notions of sexuality. Further, unless the healthcare providers respect the confidentiality and privacy of adolescent girls, and treat the girls with dignity, the girls are likely to be deterred away from public health institutions, falling prey to unlicensed health professionals, quacks, witch doctors and the like. Hence confidence-building measures of health professionals among adolescent girls is imperative.

A key to sustainable improvement in the right to health, food and nutrition of adolescent girls lies in state efforts that are directed at changing patriarchal attitudes. Discriminatory practices related to feeding, early and forced marriages, early pregnancies and related health complications, domestic and other forms of violence against girls, heavy domestic work without rest and leisure are some aspects that stem from patriarchal attitudes, which adversely affect adolescent girls' health. Patriarchal norms also deny girls the right to make decisions regarding sexuality and reproduction, exposing them to health risks including sexually transmitted diseases and HIV/AIDS. Socio-cultural factors leading to female sex selective abortions and female infanticide stem from son preference and undervaluation of the girl child. These factors contribute to undermining women's right to health, food and nutrition throughout their lifecycle, including the period of adolescence. Such practices can be changed slowly but surely through concerted efforts at public education and awareness-raising, both among adolescent girls as well as the communities they live in.

The Committee on Rights of the Child has also been concerned that health of adolescent girls is neglected, through early marriages, and the neglect of mental health of adolescent girls that lead to suicides among them.45 Violence against girls is also intricately linked to their physical and mental health, particularly post-traumatic stress disorder and depression. The Indian state should initiate concerted data collection and research on all aspects of adolescent girls' health, food and nutrition, with particular focus on mental health issues, which have been largely ignored. Data collection and research, and mechanisms to monitor adolescent girls' access to health care and health delivery systems are important to evaluate the impact of programmes and interventions at the ground level.

The prevailing international standards on reproductive and sexual rights focus on complete protection, without undermining/violating them on any pretext, including by external causes, cultural, economic, social and political factors. States have an obligation to address the barriers to realization of these rights at the structural level. In specific reference to girls and women, empowerment and equality form the foundational basis for exercise/enjoyment of reproductive rights. Reproductive rights rest on recognition of the right to attain the highest standard of sexual and reproductive health, free of discrimination, coercion and violence.46 The Special Rapporteur on Right to Health (SRRH) explained that international obligations include a duty on the State to respect an individual's freedom to control his or her health and body, and that this obligation was not subject to progressive realization or resource constraints, but is an immediate obligation on states.47 The SRRH has further outlined that the right to health entitles women to reproductive health care services, goods and facilities that are available in adequate numbers; accessible physically and economically; accessible without discrimination; and of good quality.48 By extension, this standard can be

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45. CRC: India, 2000 at para 50
46. National Sample Survey Organization, Table 21-2, Delhi, 1991; s70-s119.
47. Report of the UN Special Rapporteur on the Right of everyone to the enjoyment of the highest attainable standard of physical and mental Health (SRRH), E/CN.4/2004/49 at para 27
Right to health care includes facilities for safe and affordable abortion, with an assurance of confidentiality of the abortion, to prevent a stigma to the girls / women undergoing abortion. The fact that abortion is legal in a country does not implicitly mean that safe and affordable abortion services are available, as the context of India proves. This is best illustrated in the words of the SRVAW as follows:

"The difficulties associated with obtaining an abortion in India, where abortion is legal, is demonstrative of these problems. In India, only 1,800 of the 20,000 primary health centres have Medical Termination of Pregnancy facilities. Moreover, government authorities insist on a sterilization procedure after the abortion, and while abortion is technically free of charge, the charges incurred for blood, saline and drugs, in addition to the cost of bribing hospital employees, cause women to seek the services of illegal practitioners. Women with unwanted pregnancies are forced to rely on low-cost alternatives which are often undertaken by untrained practitioners under unsanitary conditions."  

The experiences of women outlined above are also applicable to adolescent girls. Unmarried adolescent girls face additional obstacles in accessing abortion services due to the social stigma as well as conservative attitude of health workers. International bodies have also emphasized state obligation in providing "complete and impartial information regarding the full range of contraceptive methods and reproductive health issues generally," not only to married women but also to unmarried women and adolescents. The SRRH has elaborated the SRVAW's emphasis on state obligation to provide access to information for adolescents, in the following words:

"Adolescents and young people under 25 years of age are especially vulnerable in the context of sexual and reproductive health. Adolescence is a period characterized by sexual and reproductive maturation. Yet in many countries adolescents lack access to essential and relevant information and services in relation to sexual and reproductive health. Their need is acute."

The SRRH also emphasized that "some traditional views about sexuality are obstacles to the provision of sexual and reproductive health services, including reliable information, and these views have an especially damaging impact upon adolescents." State obligation, therefore, entails that such traditional views are addressed and countered through public awareness programmes.

In expressing her concern about sex-selective abortions in India, the SRVAW emphasized that the state should develop a comprehensive understanding of the cultural attitudes that promote the practice. Conversely, without understanding or addressing son preference / daughter aversion and low socio-economic status accorded to girls in the Indian society, the Maharashtra state government has been emphatic in its move to include sex-selective abortions (wrongly terms female feticide) within the offence of murder in the Indian Penal Code. This is a response to the decreasing sex ratio highlighted in the National Population Census 2011. The state's obligations are to ensure a proper implementation of provisions of PCPNDT Act, and to address the root causes of sex-selective abortion. Instead, by referring to all abortions as foeticide, the proposed amendment to law could make all abortions illegal, denying all women and girls the right to a safe abortion - clearly
a failure of state obligation to respect the human rights of girls and women.\textsuperscript{56}

State responsibility towards adolescent girls' right to food should not only ensure freedom from hunger (which would merely ensure a survival existence) but also an adequate standard, including quantity and quality of food and nutrition. Tables 10.3 and 10.4 below highlights various aspects of state responsibility towards adolescent girls' right to health and food and nutrition respectively.

### Table 10.3: Some Aspects of State Obligation towards Adolescent Girls' Right to Health

<table>
<thead>
<tr>
<th>Obligation to respect</th>
<th>Obligation to fulfil</th>
<th>Obligation to protect</th>
</tr>
</thead>
<tbody>
<tr>
<td>Availability</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Refrain from</td>
<td>Refrain from</td>
<td>Prevent third parties</td>
</tr>
<tr>
<td>imposing</td>
<td>relinquishing</td>
<td>from interfering with</td>
</tr>
<tr>
<td>discriminatory</td>
<td>state's obligation</td>
<td>adolescent girls'</td>
</tr>
<tr>
<td>practices relating</td>
<td>towards promoting</td>
<td>right to health,</td>
</tr>
<tr>
<td>to girls' health</td>
<td>and protecting</td>
<td>right to health,</td>
</tr>
<tr>
<td>status and needs;</td>
<td>girls' health</td>
<td>disaggregated on</td>
</tr>
<tr>
<td>Refrain from</td>
<td>by transferring /</td>
<td>grounds such as sex,</td>
</tr>
<tr>
<td>limiting access to</td>
<td>delegating the same</td>
<td>age and urban/rural</td>
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<tr>
<td>contraceptives and</td>
<td>to private sector</td>
<td></td>
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<tr>
<td>other means of</td>
<td>agencies;</td>
<td></td>
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<tr>
<td>maintaining sexual</td>
<td>Establish health</td>
<td></td>
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<tr>
<td>and reproductive</td>
<td>centres for adolescent</td>
<td></td>
</tr>
<tr>
<td>health;</td>
<td>girls;</td>
<td></td>
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<tr>
<td>Refrain from</td>
<td>Allocate adequate</td>
<td></td>
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<tr>
<td>treating adolescent</td>
<td>resources towards</td>
<td></td>
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<tr>
<td>girls in health</td>
<td>health of girls</td>
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<tr>
<td>care institutions in</td>
<td>Implement awareness-</td>
<td></td>
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<tr>
<td>an inhumane manner,</td>
<td>raising programmes,</td>
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<tr>
<td>that violates their</td>
<td>promote education</td>
<td></td>
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<tr>
<td>human rights</td>
<td>and provide incentives</td>
<td></td>
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<tr>
<td>Refrain from</td>
<td>for raising the age</td>
<td></td>
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<tr>
<td>taking advantage of</td>
<td>of marriage among</td>
<td></td>
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<tr>
<td>the vulnerability of</td>
<td>adolescent girls;</td>
<td></td>
</tr>
<tr>
<td>physically /</td>
<td>Impart gender-sensitive</td>
<td></td>
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<tr>
<td>mentally challenged</td>
<td>training to health</td>
<td></td>
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<tr>
<td>adolescent girls in</td>
<td>care workers for</td>
<td></td>
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<tr>
<td>institutions, and</td>
<td>detecting and</td>
<td></td>
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<tr>
<td>abusing /</td>
<td>managing the</td>
<td></td>
</tr>
<tr>
<td>assaulting them</td>
<td>health consequences</td>
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<td></td>
<td>of gender-based</td>
<td></td>
</tr>
<tr>
<td></td>
<td>violence;</td>
<td></td>
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<tr>
<td></td>
<td>An adequate system</td>
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<td></td>
<td>for the collection</td>
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<td></td>
<td>of health data to</td>
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<td>monitor the</td>
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</tr>
<tr>
<td></td>
<td>realization of the</td>
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</tbody>
</table>

\textsuperscript{56} See Petition to Union Health Minister - Abortion is not Murder - http://fassmumbai.wordpress.com/2012/07/14/fass-protests-maharashtra-govts-plans-to-slap-murder-charges-for-sex-selection/, accessed 1 October 2012
<table>
<thead>
<tr>
<th>Acceptability</th>
<th>Quality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Refrain from infringing upon the privacy of adolescent girls, in the name of public good (e.g., monitoring pregnant girls to prevent sex-selective abortions)</td>
<td>Preventing harmful drugs for addressing adolescent girls' issues, such as anemia, low BMI, micronutrient deficiencies</td>
</tr>
<tr>
<td>Refrain from acting without the consent of adolescent girls and their parents, in the name of best interests of the girls (such as hysterectomies on mentally challenged girls)</td>
<td>On-job training and capacity-building of health professionals</td>
</tr>
<tr>
<td>Public education programmes to address concerns of parents / resistance from communities towards sex education of adolescent girls</td>
<td>Imparting training on a gender perspective of adolescent girls' health issues</td>
</tr>
<tr>
<td>Provide sex and health education to adolescent girls appropriate to their age</td>
<td>Make available abortion services to girls that are safe, conducted by qualified medical professionals, and with a guarantee of full confidentiality</td>
</tr>
<tr>
<td>Provide contraceptive methods that are acceptable to the girl in her sociocultural setting</td>
<td>Establish mechanisms for quality control of health services provided to girls</td>
</tr>
<tr>
<td>Ensure enabling environment for food security, particularly to impoverished communities</td>
<td></td>
</tr>
<tr>
<td>Ensure supply of clean palatable water, sanitation, housing and livelihood which create the enabling environment to exercise the right to food and nutrition</td>
<td></td>
</tr>
<tr>
<td>Initiate public awareness campaign on food and nutrition, both among adolescent girls as well as family/community members</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Availability</th>
<th>Obligation to respect</th>
<th>Obligation to fulfill</th>
<th>Obligation to protect</th>
</tr>
</thead>
<tbody>
<tr>
<td>Refrain from interfering with adolescent girls' enjoyment of right to food and nutrition</td>
<td>Ensure enabling environment for food security, particularly to impoverished communities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Refrain from withholding / obstructing supply of food and nutrition as a form of political / economic pressure</td>
<td>Ensure supply of clean palatable water, sanitation, housing and livelihood which create the enabling environment to exercise the right to food and nutrition</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Initiate public awareness campaign on food and nutrition, both among adolescent girls as well as family/community members</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Accessibility</th>
<th>Quality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Refrain from diminishing / obstructing with girls' existing access to food</td>
<td>Refrain from diminishing existing nutritional levels</td>
</tr>
<tr>
<td>Control prices of essential food items</td>
<td>Ensure that privatization does not constitute a threat to the quality of health services provided to girls</td>
</tr>
<tr>
<td>Enact programs to ensure more access to food for adolescent girls</td>
<td>Impose sanctions for unhygienic practices of health professional that adversely impact adolescent girls' health</td>
</tr>
<tr>
<td>Take steps to increase nutritional in-take and nutritional quality of food</td>
<td>Ensure that privatization does not constitute a threat to the quality of health services provided to girls</td>
</tr>
<tr>
<td>Address patriarchal norms such as low social status of girls, discrimination in feeding girls etc, through public education</td>
<td>Adopt measures aimed at improving girls' access to food, including by publicising beneficial schemes</td>
</tr>
<tr>
<td>Not to let others encroach on this enjoyment</td>
<td>Implement schemes by which free rations / nutrition packages are distributed among adolescent girls who are malnourished</td>
</tr>
</tbody>
</table>

| Sanctions for circulation of inferior quality food, water to girls |
| Not to permit contamination of nutritional content and quality of food (such as through adulteration / toxic fertilizers) |
B5: Age of Marriage & Agency in Marriage

International human rights treaty bodies have expressed serious concern over the incidence of forced marriages of under-aged girls in India.\textsuperscript{57} Many international human rights texts underscore equality and non-discrimination, as well as the notion of choice (i.e. free and full consent) as the basis for marriage and forming a family. CEDAW, through Article 16, took a significant additional step in calling upon the state to eliminate discrimination against women in all matters relating to marriage and family relations, including the right to enter into marriage with free and full consent.\textsuperscript{58} General Recommendation 21 to CEDAW reaffirms this.\textsuperscript{59} By extension, this obligation would also apply to adolescent girls entering into marriage and formation of a family. The existing legal context in India where variable age of marriage exists in family laws (discussed in detail in Chapter 7 of this book) is in direct contradiction with CEDAW's attempt to have a legislative stipulation of the minimum age of marriage, coupled with a monitoring mechanism to curb child marriages.

In a society where arranged marriages are the norm, and most girls/women have little say in when to get married or whom to marry, choice marriages by adolescent girls and young women are met with stiff resistance and often, violent means. The possibility of violence increases in contexts of those choice marriages which transgress the norms of caste/class/religion. State's responsibility in such contexts, would entail protecting the adolescent girl as well as addressing the root causes of such violence. The UN Special Rapporteur on Violence Against Women, in her report on the root causes of violence against women, reiterated the obligations of the state to "battle against gender-based violence" by eliminating prejudices that are most prominent in the areas of culture, community and family.\textsuperscript{60} She opined that if the State were able to bring about fundamental changes in the patterns of socialization which tend to disempower women and create an atmosphere in which violence against them appears more legitimate, it would be a significant step towards the elimination of gender-based violence.\textsuperscript{61}

Today, in India, the situation of very young girls being forcibly married by their parents when they are not physically and mentally ready for marriage and its responsibilities undermines their enjoyment of the entire gamut of human rights. Equally, where adolescent girls closer to the age of maturity exercise their agency in marriage, the family and community transform from being protectors to predators, violently crushing the girl's human rights, often with the help of law and state power. The Indian state's obligations vary in each of these two situations. These are highlighted in Table 10.5 below.

| Table 10.5: Some Aspects of State Obligations Towards Adolescent Girls With Regard to Age of Marriage and Agency in Marriage |
|-----------------------------------------------|-----------------------------------------------|-----------------------------------------------|
| Obligation to respect | Obligation to fulfil | Obligation to protect |
| Curbing Child Marriages | • Public officials should refrain from performing / facilitating / abetting / participating in child marriages | • Creating an enabling environment for curbing child marriages | • Strictly enforce and implement law on child marriage prohibition, and take action against those responsible for such marriages |
| | • Refrain from obstructing / preventing people from curbing child marriages | • Address vulnerability of adolescent girls through non-formal education, development of livelihood skills, raising awareness of sexual and reproductive health, youth and gender-friendly health services and life skills education | • Protect and rehabilitate girls involved in such marriages |

\textsuperscript{57} CRC: India, 2000 at paras 55-57; CRC: India, 2004 at paras 60-61
\textsuperscript{58} For more details, see Art. 16 (1) (a) - (h) of CEDAW
\textsuperscript{59} General Recommendation 21 to CEDAW (1994) states: The form and concept of the family can vary from State to State, and even between regions within a State. Whatever form it takes, and whatever the legal system, religion, custom or tradition within the country, the treatment of women in the family both at law and in private must accord with the principles of equality and justice for all people, as Article 2 of the Convention requires. (A/47/38 at para 13)

\textsuperscript{60} The report of SRVAW, E/CN.4/1995/42, dated 22 November 1994, at para 110
\textsuperscript{61} Ibid
<table>
<thead>
<tr>
<th>Protecting Agency in Marriage</th>
<th>To India provide the framework of specific state obligations in the Indian context. These are highlighted below, before presenting a matrix of some state obligations of India in this regard. Formulating laws is important for setting norms and standards of what is acceptable and prohibited behaviour. However, international standards warrant that states do more than only formulate penal laws and prosecute perpetrators for gender-based violence. One of the major contributions of international feminist jurisprudence is to highlight states' obligation to take preventive measures that identify and address the root causes of gender-based violence, rather than only address their manifestation. Root causes of gender-based violence include historically unequal power relations, sexuality, cultural ideology, doctrines of privacy, patterns of conflict resolution and government inaction. Preventing the root causes of violence has been identified as one of the current challenges in combating gender-based violence. For example, in the Indian context, skewed sex ratio is a manifestation, while its root cause is son preference; acid attacks and honour crimes on adolescent girls is a manifestation, that is reinforced by a root cause - the prevailing gender inequality and perception that girls do not have a right to exercise choice and agency with regard to inter-personal relationships; domestic violence is a manifestation of the underlying unequal power relationships between men and women, and women's (and girls') subordinate socio-economic status with regard to marriage and family.</th>
</tr>
</thead>
</table>
| • Public officials should refrain from registering false complaints against adolescent girls and their partners, and assisting parents in undermining adolescent girls' rights | B5: Violence against Girls
As discussed in Chapter 8 of this book, violence against girls constitutes a form of gender-based violence. The jurisprudence of international treaty bodies and special mechanisms outlines the obligations of states with regard to gender-based violence, while the Concluding Observations/Comments of treaty bodies (such as the CEDAW committee, Committee on Child Rights and the Human Rights Committee) | • Gender and human rights training programmes for police, other law enforcement personnel and judiciary on the issue of choice marriages | • Address multiple levels of vulnerabilities that adolescent girls in choice marriages face, and protect them |
| • Refrain from detaining adolescent girls in institutions against their will | • Establish short stay / shelter homes for adolescent girls in crisis situation | • Issue clear instructions to law enforcement personnel preventing the misuse of criminal law by parents / guardians | • Monitor responses of law enforcement personnel to cases of choice marriages involving adolescent girls |
| • Refrain from all forms of moral policing on adolescent girls | • Encourage acceptability of inter-caste, inter-religious marriages through public education | • Raise awareness about right of girls to exercise their choice in marriage | |
The negative obligations of a state, in ensuring women's right to a violence-free life, have been stated as follows:

"States cannot invoke any cultural discourses, including notions of custom, tradition or religion, to justify or condone violence against women. This also means that they may not deny, trivialize or otherwise play down the harm caused by such violence by referring to these notions. Instead, States are expressly required to condemn such violence, which entails denouncing any cultural discourse put forward to justify it. For this reason, senior government officials who remain silent when significant sectors of their own population justify certain types of violence against women with reference to culture incur responsibility for a human rights violation."

The state obligation to conform to due diligence standards has been explained as more than "the mere enactment of formal legal provisions" and that the State must act in good faith to "effectively prevent" violence against women (read-including girls). Such an obligation includes the duty to transform patriarchal gender structures / institutions and societal values that perpetuate and entrench violence against women by sustaining gender inequality.

A General Recommendation to the CEDAW focusses on penal responses, along with public education, public information, data collection and research towards eventually changing attitudes, customs and practices. The CEDAW Committee has also stated that traditional, religious or cultural practice, involving violence or coercion, cannot justify gender-based violence as a form of protection or control over women. The UN Declaration on the Elimination

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68. General Recommendation No. 19, issued by the CEDAW Committee in 1992 at para 24
69. Ibid at para 11
73. Ibid at para 72(b)
74. CRC: India, 2000, at para 70
inter-state controls and reintegration and advocacy programmes to prevent the exploitation of women and girls in forced prostitution and trafficking.\textsuperscript{76} In 2007, the CEDAW committee re-emphasized the need for the Indian state to develop, in consultation with women’s groups, a coordinated and comprehensive plan to combat all forms of violence against women, taking a life cycle approach.\textsuperscript{76} It also reiterated the need for sensitisation of public officials, particularly law enforcement officials, judiciary, health care providers and social workers, on gender-based violence. It further suggested that the Indian state put in place mechanisms for effectively enforcing the law on domestic violence, and consult with women’s groups widely, while bringing about reform in laws and procedures related to rape and sexual abuse.\textsuperscript{77}

The Committee on the Rights of the Child has been concerned about a range of issues related to violence against children (under 18 years of age), in some of which it has made a specific reference to girls. These include trafficking and commercial exploitation of girls, particularly from neighbouring countries, sexual abuse and exploitation of children from lower castes and poor rural and urban areas, violence and exploitation in the context of religion and traditional practices (such as the devadasi system and child marriages), child domestic workers, street children, communal violence, ethnic conflict and violations by security forces in areas of conflict.\textsuperscript{78} It recommends a national mechanism to monitor implementation of all laws dealing with these issues, and the establishment of complaint procedures, helplines, rehabilitation programmes and shelters. A national study, and compilation of disaggregated data, as a basis for designing measures and evaluating progress, as well as the importance of public education programmes to combat harmful traditional practices and to mobilize the general public on the child’s right to physical and mental integrity, have been emphasized.\textsuperscript{79} In its 2004 report, the Committee on Child Rights, inter alia, reiterated the importance of state obligation to initiate a comprehensive study and data collection, allocation of adequate human, financial and technical resources as well as programmes for the physical and psychological recovery and social integration of child victims of trafficking and sexual exploitation.\textsuperscript{80}

The Indian state has a deficit in fulfilling its obligations on the issue of violence against girls. For example, as stated earlier, its obligation to respect entails it to publically condemn violence, and denounce cultural discourses that are advanced to justify such violence. Yet, in the context of shocking case of a public attack and molestation against an adolescent girl in Guwahati, Kailash Vijayvargiya - a minister from Madhya Pradesh - said that women should follow Indian culture,\textsuperscript{81} while Mamta Sharma - the Chairperson of National Commission for Women - advised girls and women to dress ‘carefully’.\textsuperscript{82} In the wake of attacks against college girls in Mangalore by right-wing fundamentalist forces involved in moral policing, the State Commission for Women’s report focussed substantially on ‘youths going astray’.\textsuperscript{83} Similarly, when the father of a 14-year old girl approached the police for help as he was worried that his daughter may marry the person who had allegedly kidnapped her, a senior police officer reportedly remarked that if she had been his sister or daughter, he would have shot her dead, thereby instigating / justifying honour crimes.\textsuperscript{84}

\textsuperscript{76} Ibid at paras 76-77
\textsuperscript{77} CEDAW: India, 2007 at paras 20-23
\textsuperscript{78} Ibid at para 23
\textsuperscript{79} CRC: India, 2000 at para 74
\textsuperscript{80} CRC: India, 2004 at paras 74-75
\textsuperscript{81} ‘Women’s Dresses should be Dignified and not Provocative, MP Industry Minister Says’, The Times of India, 21 July 2012
\textsuperscript{82} ‘Dress Carefully to Avoid Crime: NOW Chief’, The Times of India, 19 July 2012
\textsuperscript{83} ‘A Sham Report by Women’s Commission on the Mangalore Home Stay Attack’, The Deccan Chronicle, 10 August 2012
\textsuperscript{84} ‘Senior Uttar Pradesh Police Officer Backs Honour Killing’, The Times of India, 10 May 2012
Such comments made in public by influential persons holding or associated with state power, reinforces and strengthens moral policing, and perpetuates violence against adolescents and youths using a cultural discourse. By failing to send out a clear, unequivocal message to the perpetrators and society at large that violence against adolescent girls will not be tolerated, and are serious crimes entering punishment, the state has digressed from its obligation to respect human rights of adolescent girls.

On the issue of domestic violence, in July 2010, Maharashtra’s Home Department reportedly instructed the police to not only verify the complaint under S. 498A of Indian Penal Code before acting on it but also to try out options such as counselling for the parties involved. Acting on the directives of the Union Home Ministry, the state home department reportedly issued a circular to police stations across the state in the matter, instructing that they should not arrest the accused without a warrant and should conduct a preliminary inquiry before filing a First Information Report under S. 498A. Such acts not only embolden the perpetrators against their female spouses, including adolescent girls, but also reinforce the patriarchal mindset of domestic violence as a "private matter". Such statements / directives by public officials / ministries make invisible the experience of domestic violence as faced by women and girls, and demonstrate an absence of due diligence in taking measures to respect, protect, prosecute and punish perpetrators of domestic violence.

Table 10.6 highlights some aspects of state obligation towards violence against adolescent girls.

<table>
<thead>
<tr>
<th>Obligation to respect</th>
<th>Obligation to fulfil</th>
<th>Obligation to protect</th>
</tr>
</thead>
<tbody>
<tr>
<td>● State authorities must refrain from perpetrating / aiding / abetting / facilitating / condoning any form of violence against girls either by the state, community or family.</td>
<td>● Create an enabling environment for laws, policies, programmes and interventions that protect adolescent girls from violence to be effectively implemented.</td>
<td>● Prohibit families, communities and state agents from perpetrating any form of violence against girls, through criminal sanctions and civil remedies.</td>
</tr>
<tr>
<td>● Enact laws that address all forms of violence against girls.</td>
<td>● Formulate laws and procedures that are accessible to girls and women.</td>
<td>● Recognize the root causes of violence against girls - social, economic and political factors that contribute to gender inequality and reinforce practices that facilitate / promote violence against girls, and address them through law and other means.</td>
</tr>
<tr>
<td>● Publicly condemn all forms of violence against girls, including denouncing cultural discourses that justify the violence.</td>
<td>● Establish and efficiently administer shelter homes, counselling and crisis centres, rehabilitation centres and other forms of institutional care with strict adherence to adolescent girls' human rights and respect to their dignity and privacy.</td>
<td>● Effectively enforce and implement all laws protecting girls from violence.</td>
</tr>
<tr>
<td>● Refrain from invoking custom, tradition, religion, constructs of masculinity / femininity or other such reasons to avoid their obligation to eliminate violence against girls.</td>
<td>● Ensure that the supportive services are accessible to girls from marginalized, underprivileged, rural and isolated communities.</td>
<td>● Take prompt and efficient action to register complaints, investigate, prosecute and punish perpetrators of violence against girls.</td>
</tr>
<tr>
<td>● Refrain from denying, trivializing or playing down the harm caused by violence against girls.</td>
<td>● Allocate adequate financial, human and technical resources for the same.</td>
<td>● Provide for reparations to girls, that focus on protecting their physical and mental integrity, rehabilitate and facilitate their social re-integration.</td>
</tr>
<tr>
<td></td>
<td>● Conduct research, data collection and impact assessment of law and policy.</td>
<td>● Exercise due diligence in preventing violence against girls. In investigating, prosecuting and punishing perpetrators, and in providing redress to victims.</td>
</tr>
<tr>
<td></td>
<td>● Conduct capacity-building programmes on law, human rights and gender, with a particular reference to adolescent girls' rights, for public officials including law enforcement officials, health professionals and members of the judiciary.</td>
<td>● Ensure that monitoring mechanisms are in place to take action against officials who show apathy / indifference to violence against girls, or fail to discharge their duties mandated by law.</td>
</tr>
</tbody>
</table>

---

65. Ravikiran Deshmukh, 'Don't Be Hasty in Case of Cruelty Against Women', Mumbai Mirror, 17 July 2010
66. Ibid
B6: Juvenile Justice

Through General Comment 10 to the Convention on the Rights of the Child, the Committee for the Rights of the Child has provided states with elaborated guidance and recommendations for their efforts to establish an administration of juvenile justice in compliance with CRC.\(^7\) One of the main aspects of state responsibility is the obligation to treat children equally, without any form of de facto or de jure discrimination and disparities involving vulnerable groups of children, including girls.\(^8\) This includes an obligation to ensure that measures are taken to prevent discrimination through appropriate support and assistance to reintegrate in society. State obligation towards equality also entails that it eliminates provisions in domestic law that criminalize behavioural problems of children - such as laws on vagrancy, truancy, runaways - which often stem from psychological or socio-economic problems. The CRC raises concern that girls are often vulnerable to this form of criminalization.

The UN Committee on the Rights of the Child has expressed its concern with regard to the administration of juvenile justice in India in 2000 and 2004. Among other issues, it expressed concern at the very young age of criminal responsibility (7 years), the overcrowded and unsanitary conditions of detention of children, including detention with adults, lack of training for professionals and lack of application and enforcement of existing juvenile justice legislation, and called upon the government to review the existing legislation to ensure that they are in accordance with international standards and principles.\(^9\) It further recommended that the age of criminal responsibility be raised and that the government ensure regular, frequent and independent monitoring of institutions for juvenile offenders.\(^10\) In 2004, among other issues, it expressed its concern that deprivation of liberty of juveniles was not strictly used only as a measure of last resort, as required in international standards. It recommended that the Indian government strengthens its training programmes to all professionals involved in the juvenile justice system, strengthen rehabilitation and reintegation programmes and use deprivation of liberty only as a measure of last resort.\(^9\)

The Indian state requires to do much more in discharging its responsibilities under international law, vis-à-vis adolescent girls within the juvenile justice system. The following aspects require immediate responses from the state:

- Personnel of state-run child care institutions as well as police personnel have turned predators instead of protectors. They have abused their positions by assaulting, abusing and exploiting female inmates, and have violated the physical and mental integrity of girls in many reported instances (discussed in Chapter 9). (obligation to respect)
- There is a lack of government-sponsored research and data base in the public domain on the number of adolescent girls who are within the juvenile system, in need of care and protection, and the circumstances that contributed to their situation. There is no clear picture on the total number of child care institutions in the country that specifically cater to adolescent girls. Studies indicate that very few institutions work specifically with adolescents - a group that is traditionally seen to be 'troublesome' (obligation to fulfil)
- Historically, the number of girls in conflict with the law is much lesser than the number of boys. For this reason, the provisions of Juvenile Justice Act do not adequately address issues related to girls, as 'juveniles' / 'children' are treated as a near-homogenous population; (obligation to protect)

\(^7\) The UN Committee for the Rights of the Child, General Comment No. 10, 25 April 2007, CRC/C/GC/10
\(^8\) Ibid at paras 6-9
\(^9\) Ibid at paras 6-9
\(^10\) CRC: India, 2000 at paras 79-80
\(^11\) Ibid at para 81

\(^9\) CRC: India, 2004 at paras 78-80
There is a lack of monitoring of child care institutions by state governments. Many of them are not registered under the relevant laws and hence are excluded from the state governments’ scrutiny. In those institutions which are registered, apathy and abdication of responsibilities of state governments has led to a situation where there is no periodic inspection and monitoring of administration of child care institutions, as is required by law. This provides a conducive climate for systemic and prolonged abuse of girls in captivity behind the closed doors of the institutions, as experience indicates. The government can fulfil its obligation to protect by refraining from a dereliction of its duties to monitor institutions set up under the JJA, and to implement rigorous systems of monitoring. (obligation to protect)

The Juvenile Justice Act provides for prosecution and punishment to those officials of child care institutions who illegally detain, handcuff, chain, assault, abandon, expose or neglect in a manner that causes the juvenile unnecessary mental or physical suffering. Despite incidents of rampant abuse of juveniles during the process of juvenile justice as well as in child care institutions, hardly any police, prison officials or officials in charge of administration of the institutions have been prosecuted and punished. If the government were to strengthen its initiative at investigating and successfully prosecuting some errant officials, such an act could potentially have a deterrent effect. (obligation to protect)

Although the international standards on juvenile justice emphasize on prevention, Indian policy, programmes and interventions would need to act with increased rigour in preventing girls from entering the juvenile justice system in the first place. Such preventive measures would necessarily need to address, through public education, the patriarchal values that discriminate against girls, the devaluation of girls and lower socio-economic status of girls that contribute to their destitution, abandonment and abuse. (obligation to protect)

C. CONCLUSION

The framework of state obligations under international human rights, consisting of the obligations to respect, fulfil and protect, is a useful yardstick to measure the performance of the Indian state vis-à-vis adolescent girls' rights. The first step to fulfilling its obligations is for the Indian state to recognize adolescent girls as a distinct category, possessing rights, having needs and undergoing experiences and challenges that are unique to the group. For this, it is important that adolescent girls are not subsumed in the categories of 'women', 'children', 'girl child' or 'youth'. Where law and policy focusses on adolescents, a gender perspective must be integrated, and the experiences of adolescent girls inform and influence the same. Adolescent girls should also not be considered passive recipients / beneficiaries but as active participants and agents in their own accord, with broad-based rights and needs that are required to be addressed effectively.

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Chapter 11
Claiming Ownership Of The Future:
Visions Of Adolescent Girls

This book would be incomplete if it did not document views and visions of adolescent girls on issues that impact them. We know for a fact that adolescent girls are not mere recipients or beneficiaries of favourable laws and policies. Many of them exercise agency if given an opportunity, and engage actively in asserting their rights with regard to laws and policies, sometimes questioning them and pushing the boundaries of their protection to and promotion of rights of adolescent girls. This chapter gives a glimpse of what adolescent girls' views and perspectives are on the range of issues discussed in this book. A study was conducted in September - October 2012 with a representative sample of 112 adolescent girls from underprivileged communities in Mumbai that Vacha - a Mumbai-based non-profit organization - works with, using a questionnaire. This chapter presents a compilation of the findings of the study and an analysis of the same.

A. TOOL, SETTING & METHODOLOGY
A questionnaire with 10 questions covering the range of topics covered in this book was prepared, translated into
Hindi and used for the study. Please see Annexure 11A for the sample questionnaire used. Prior to distributing the questionnaire, a short introductory session was conducted, which familiarised the girls with the language and nature of issues covered in the questionnaire. The girls were divided into groups for the purpose of filling up the questionnaire. Each group had a facilitator from Vacha, who was familiar to them, to answer their queries with regard to the questionnaire, if any, and guide them through the process of completing the questionnaire. The girls undertook this task in an environment that they considered comfortable - with no presence of boys or school teachers.

Relevant comments, remarks and issues raised by the girls have been reproduced, in order that rich narratives do not get subsumed within statistics. The girls have given multiple answers to most questions. To each question, some girls gave no response. In order to ensure that their varied concerns and views on all issues are recorded, we have reported each as a separate response. This study integrates quantitative and qualitative aspects of research.

B. PROFILE OF THE GIRLS

All the girls who participated in this study have been associated with Vacha’s programmes and activities for some months / years and were therefore conversant with the issues being discussed. A total of 112 girls in the age group of 13 to 18 years participated in the study. 70 girls filled the questionnaire in their school class room, while the remaining girls filled it at the community centre where Vacha regularly conducts sessions on issues pertaining to adolescent girls. All the girls are presently accessing formal education, in vernacular medium, government-run schools.

They live in the bastis (slum communities) of Mumbai and its suburbs, more specifically in the areas of Santacruz, Juhu, Andheri, Malwani (Malad) and Kalyan. Their socio-economic conditions are similar, but may vary slightly depending on their geographical distance from the central parts of Mumbai city.

The girls’ language, state of origin and religion were not considered as criteria for participation in the study. However, as a general observation, most girls spoke in Hindi, followed by Urdu, Marathi and Tamil. In terms of their religious identity, most girls belong to the Hindu, Muslim and Neo-Buddhist communities.

C. FINDINGS OF THE STUDY

At the outset, it is important to record that the girls deeply appreciated the process of asking them what they think of societal issues, laws and government interventions. Most girls invested substantial time, thought and effort into answering the questions, as they felt this was a rare chance where their opinion on such important issues were asked for. On an average, each girl took 45 minutes to 1 hour to answer the questionnaire. They filled up the questionnaire with concentrated attention and sincerity. In fact, a few girls confided in the facilitators that they had "poured out their hearts" in this form - as this was one of the rare opportunities that they had for expressing themselves so freely, on issues that are very close to their heart but are otherwise considered taboo to be expressed in society.

C1. Being an Adolescent Girl

The first question that was posed to the girls was to name three best things that they like about being an adolescent girl. A range of answers were received, shown in Table 11.1. Spending time and going out with friends, dressing up and wearing fashionable clothes, and playing were some of the most popular answers given. These appear to be emotional outlets for the girls from the burden of domestic and familial responsibilities. A large number of girls also felt that studying was one of the best aspects of being an adolescent girl. One girl expressed: "school time is the only time that feels like my own personal time...", highlighting the importance of schooling for adolescent girls, not only for their academic
growth but also as a safe space for interaction among them and for the overall development of the girls. Only one girl responded that getting married was a best aspect of being an adolescent girl, indicating that marriage was not a priority among the girls who participated in the study.

**Table 11.1: Best Aspects of Being an Adolescent Girl**

<table>
<thead>
<tr>
<th>Responses</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Being with friends, going out</td>
<td>49</td>
</tr>
<tr>
<td>Studying</td>
<td>39</td>
</tr>
<tr>
<td>Dressing up, wearing fashionable clothes</td>
<td>30</td>
</tr>
<tr>
<td>Playing</td>
<td>27</td>
</tr>
<tr>
<td>Cooking food</td>
<td>14</td>
</tr>
<tr>
<td>Being with family, taking care of family, maintaining relationships well</td>
<td>12</td>
</tr>
<tr>
<td>Being self-reliant/ progressing in life/living life according to own will</td>
<td>9</td>
</tr>
<tr>
<td>Being a girl</td>
<td>5</td>
</tr>
<tr>
<td>Decorating the house/doing household work</td>
<td>5</td>
</tr>
<tr>
<td>There are no restrictions at this age</td>
<td>4</td>
</tr>
<tr>
<td>Singing, dancing</td>
<td>4</td>
</tr>
<tr>
<td>Drawing, mehendi</td>
<td>3</td>
</tr>
<tr>
<td>Way of speaking/good values/good character</td>
<td>3</td>
</tr>
<tr>
<td>Girls get a higher status at this age</td>
<td>3</td>
</tr>
<tr>
<td>Teaching younger children</td>
<td>1</td>
</tr>
<tr>
<td>Not having to work</td>
<td>1</td>
</tr>
<tr>
<td>Marriage</td>
<td>1</td>
</tr>
<tr>
<td>No response</td>
<td>10</td>
</tr>
</tbody>
</table>

**C2. Aspects that Warrant Change in Their Lives**

The girls were asked to name three aspects in their present situation in life that they would want a change in. A high proportion of girls expressed that they want opportunities to study. The second most popular answer (29 girls) was that they wish to bring about a change in self, in aspects including physical appearance (body/hair/eyes/type of clothes worn), personality development (way of speaking/inner weakness/temper/bad habits) as well as in lifestyle. 19 girls expressed that they wanted to become self-reliant, be in a position to express their wishes to parents, take their advice in decision-making and assert their own wishes. This aspect highlights that many girls are acutely aware of the need to build self-confidence towards independent decision-making and self-assertion of their rights. The fourth most popular response was that they wanted less restrictions on aspects including their mobility. Physical and sexual violence against girls, as well as discrimination against them were aspects that the adolescent girls wanted to be prevented/stopped/changed, though the articulation of these concerns differed with each girl. Only two girls expressed concern about wanting to reduce their levels of mental stress, indicating that physical well-being takes predominance over psychological well-being. Table 11.2 below gives details of the responses of the girls.

**Table 11.2: Aspects that Warrant Change in the Lives of Adolescent Girls**

<table>
<thead>
<tr>
<th>Responses</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>want opportunity to study</td>
<td>34</td>
</tr>
<tr>
<td>want to bring change in self</td>
<td>29</td>
</tr>
<tr>
<td>want to become self-reliant</td>
<td>19</td>
</tr>
<tr>
<td>want freedom to go out of the house</td>
<td>15</td>
</tr>
<tr>
<td>want to stop atrocities against girls</td>
<td>13</td>
</tr>
<tr>
<td>want to change the way I behave with people</td>
<td>11</td>
</tr>
<tr>
<td>want to change family and the society</td>
<td>9</td>
</tr>
<tr>
<td>want to stop child marriage</td>
<td>8</td>
</tr>
<tr>
<td>want happiness for family members</td>
<td>7</td>
</tr>
</tbody>
</table>
C3. Education

The girls were asked a series of questions to assess their perspectives on education. These include exploring if they enjoyed going to school, and if yes, what aspect about school did they enjoy most; reasons for absenteeism from school; and what, according to them, was the biggest obstacle to girls’ access to education. The overwhelming response was that they liked going to school to be with friends. Their response also indicated that they wanted to become self-reliant and carve out an identity for themselves in future, and were acutely aware of education as a pathway for the same. Only 3 girls expressed that they liked the teachers and that teachers taught well, indicating that the quality of education is perhaps not an aspect that would retain adolescent girls in school. Only one girl responded that she liked going to school because she could get food in school. This brings into question the efficacy of the mid-day meal scheme as a "pull" factor for adolescent girls among the urban poor. Table 11.3 below illustrates the findings.

<table>
<thead>
<tr>
<th>Responses</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>To be with friends</td>
<td>32</td>
</tr>
<tr>
<td>To study</td>
<td>29</td>
</tr>
<tr>
<td>To become self-reliant</td>
<td>26</td>
</tr>
<tr>
<td>To get new information</td>
<td>25</td>
</tr>
<tr>
<td>Teachers teach well</td>
<td>3</td>
</tr>
<tr>
<td>To play</td>
<td>3</td>
</tr>
<tr>
<td>To avoid cooking and other household chores</td>
<td>1</td>
</tr>
<tr>
<td>Because we get food in school</td>
<td>1</td>
</tr>
<tr>
<td>I like books</td>
<td>1</td>
</tr>
<tr>
<td>Don’t like school as teachers don’t pay attention</td>
<td>1</td>
</tr>
<tr>
<td>Don’t like school as boys tease us</td>
<td>1</td>
</tr>
<tr>
<td>No response</td>
<td>2</td>
</tr>
</tbody>
</table>

On enquiring the reasons why girls dropped out of school or remained absent for a long duration, a majority did not respond to the question, possibly because they regularly go to school. The biggest reason cited by girls for absenteeism from school is ill-health, followed by problems at home and resistance from parents. This indicates the inter-linkage between health and education of girls. The findings in this regard are presented in Graph 11A below.

A significant finding of this study relates to the obstacles to adolescent girls seeking education. In the girls’ view, sexual harassment is the biggest obstacle, reiterating findings of studies on the inter-linkages between violence/ harassment against girls and their access to education. The low value to girls’ education that is attributed by family and society, and the related belief that girls are only meant to do cooking and housework, are other obstacles cited by the girls. One
C4. Violence Against Girls

The study also sought to understand the perception of girls with regard to forms of violence that they are subjected to. According to a majority of girls who participated in the study, the worst form of violence against girls is violence from the teacher and being held captive at home. In their view, any form of discrimination against girls was clearly unacceptable and led to mental anguish. Sexual harassment of girls, viewing girls as sex objects and early marriage ranked third. It is interesting that a small number of girls also spoke about female sex-selective abortions and being forced into prostitution as some of the worst forms of violence. For more details, see Table 11.4 below.

Table 11.4: Worst Forms of Violence Against Girls

<table>
<thead>
<tr>
<th>Responses</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beating/violence/beating from teacher/being held captive at home</td>
<td>38</td>
</tr>
<tr>
<td>Discrimination between boys and girls</td>
<td>36</td>
</tr>
<tr>
<td>Sexual harassment/looking at girls as sex objects</td>
<td>19</td>
</tr>
<tr>
<td>Early marriage/child marriage</td>
<td>19</td>
</tr>
<tr>
<td>Rape</td>
<td>9</td>
</tr>
<tr>
<td>Female sex-selective abortion</td>
<td>3</td>
</tr>
<tr>
<td>Not being trusted</td>
<td>3</td>
</tr>
<tr>
<td>To underestimate girls as being weak</td>
<td>2</td>
</tr>
<tr>
<td>Being forced into prostitution</td>
<td>2</td>
</tr>
<tr>
<td>Getting periods</td>
<td>1</td>
</tr>
<tr>
<td>No response</td>
<td>9</td>
</tr>
</tbody>
</table>

In analysing why girls are targeted for violence, a majority felt that a perception that girls are weak and that they suffer silently were the causative factors. A small number of girls articulated that it was due to disliking progress of women and girls, and so that "girls cannot go ahead of boys" - clearly indicating the use of violence to maintain status quo.
of girls in society. A girl opined as follows: "Violence happens to girls because she opposes the restrictions placed on her by her family." Another said, "to suppress us." In a candid reference to honour crimes against girls, a few expressed that violence was inflicted on girls as "the society is more concerned about its own honour." Illustrated below in Graph 11C are the findings in this regard.

Graph 11C: Reasons Why Violence is Inflicted on Adolescent Girls

In responding to what the girls can do to change the situation, a majority of girls wish to speak out against violence through collective strategies, and also change the perception of family and society towards girls, which would, in effect, arrest discrimination against girls. A substantial number of girls viewed education and empowerment of girls as a strategy for addressing violence. Only 8 girls each responded that they could take recourse to the law and suggested strict punishment to perpetrators, respectively. Some girls spoke about learning forms of self-defence as a form of self-empowerment. See Graph 11D for the findings.

Graph 11D: What can Girls do to Counter the Violence Inflicted Against Them

C5: Marriage

The adolescent girls’ attitude towards marriage was also explored through the study. When they were first asked if they would like to marry, many girls thought about this for the first time, as they had assumed that marriage was an inevitable reality in the life of girls. Through the study, they realised that they had an 'option' to marry. The findings revealed that a large number of them intend to marry beyond the legal age of marriage (18 years). 38 girls wish to marry at the age of 21-24 years, 16 girls between 18 and 20 years, and 19 girls between 25 and 30 years. A majority felt that this was not different from the age at which their parents wished them to marry. Some girls explicitly mentioned that they would get married after they completed their education, though it is not clear as to what level of education they intend to complete. Only 5 responses indicate marriage according to parents' wishes (without specifying any age). Table 11.5 below presents the findings of the study in this regard.
Table 11.5: Age at Which Girls Intend Getting Married

<table>
<thead>
<tr>
<th>Responses</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>21 to 24 years - It is not different from the age at which parents will get me married</td>
<td>38</td>
</tr>
<tr>
<td>18 to 20 years - It is not different from the age at which parents will get me married</td>
<td>16</td>
</tr>
<tr>
<td>25 to 30 - It is not different from the age at which parents will get me married</td>
<td>10</td>
</tr>
<tr>
<td>25 to 30 - It is different from the age at which parents will get me married</td>
<td>9</td>
</tr>
<tr>
<td>21 to 24 years - It is different from the age at which parents will get me married</td>
<td>8</td>
</tr>
<tr>
<td>18 to 20 years - It is different from the age at which parents will get me married</td>
<td>6</td>
</tr>
<tr>
<td>After completing my education - It is not different from the age at which parents will get me married</td>
<td>5</td>
</tr>
<tr>
<td>Will marry as and when parents decide</td>
<td>4</td>
</tr>
<tr>
<td>Will marry at the right age - It is not different from the age at which parents will get me married</td>
<td>1</td>
</tr>
<tr>
<td>Will marry after completing my education - It is different from the age at which parents will get me married</td>
<td>3</td>
</tr>
<tr>
<td>Will not marry as violence is inflicted on girls by husband and relatives - parents will not agree to this decision</td>
<td>3</td>
</tr>
<tr>
<td>Do not wish to marry, but will have to marry according to parents' decision</td>
<td>1</td>
</tr>
<tr>
<td>Do not wish to marry</td>
<td>4</td>
</tr>
<tr>
<td>No response</td>
<td>5</td>
</tr>
</tbody>
</table>

Contrary to popular notion, an overwhelming majority of girls who participated in the study preferred arranged marriage to choice marriage. Some of the reasons for this preference was that it was important to respect parents' wishes due to their family honour, boys cheat and make false promises, and that family support is assured in arranged marriages if there are marital disputes. Only 9 girls said that they would go for choice/self-arranged/love marriage. Of these girls, one questioned as follows: "how can anyone else take decisions about my life?" Another commented: "Love brings two hearts together. Who knows if an arranged marriage would give the same kind of happiness?" 6 girls wished to go for a compromise, whereby the boy will be chosen with both the parents' and the girls' wishes. One girl expressed that she did not wish to marry at all. Table 11.6 below presents these findings.

Table 11.6: Preferences of Girls in Marriage: Arranged or Choice Marriage

<table>
<thead>
<tr>
<th>Responses</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arranged - according to family's wishes (their honour is important, they will find a good boy for me)</td>
<td>64</td>
</tr>
<tr>
<td>Arranged - love marriage doesn't last (boys cheat us with false promises, there isn't happiness in love, don't like love, we get cheated)</td>
<td>9</td>
</tr>
<tr>
<td>Arranged - will have to marry according to family's will</td>
<td>7</td>
</tr>
<tr>
<td>Arranged - if there are problems later on in the marriage, family will support us</td>
<td>6</td>
</tr>
<tr>
<td>Arranged and choice - the boy will be both my family's and my choice</td>
<td>6</td>
</tr>
<tr>
<td>Choice - want to marry according to own wishes</td>
<td>5</td>
</tr>
<tr>
<td>Arranged - if the boy and in-laws are good</td>
<td>4</td>
</tr>
<tr>
<td>Choice - one is not sure about the boy in an arranged marriage</td>
<td>2</td>
</tr>
<tr>
<td>Choice - there isn't much happiness in an arranged marriage</td>
<td>2</td>
</tr>
<tr>
<td>Don't want to marry at all</td>
<td>1</td>
</tr>
<tr>
<td>No response</td>
<td>7</td>
</tr>
</tbody>
</table>
The girls' attitude towards honour killing of adolescent girls for exercising agency in choosing a life partner was also explored. A majority of girls expressed that it was wrong to kill the girl. Out of this, some felt that the family should be made to understand, while others explicitly stated that the girl had a right to choose her partner; some others felt that the girl should be explained the consequences of her action. One girl said, "It is because the parents don't agree to the marriage that the girl has to run away, otherwise she wouldn't do such a thing." Another girl commented: "If you give enough freedom to a girl she will never run away; only those girls run away who have been put under too many restrictions."

These are insightful observations made by teenage girls. A few felt that although it was wrong to kill the girl, it was also wrong to elope from home. It is a matter of concern though that 10 girls expressed that it was wrong to elope, and such girls ought to be killed, and the family exonerated for such killings. One girl underlined the importance of understanding and trust between adolescent girls and their parents. The findings are presented in Graph 11E below.

**Graph 11E: Response to Honour Killing of Girls for Eloping with Partners of Their Choice**

The study also attempted to document the girls' perception of and attitude to issues of health, food and nutrition. Among the four major health issues faced by adolescent girls today, most girls named malnutrition, white discharge and health issues related to menstruation, tuberculosis as well as 'simple' aches and pains - head ache, body ache, back ache and stomach ache. Mental health issues were conspicuous by their absence, except two girls mentioning irritability and a restless mind, and one girl referring to epileptic fits. Early marriage and pregnancy were referred to by a few girls. Some girls made a specific linkage between violence against girls and the physical / mental health of girls. A girl remarked: "most health related issues happen to girls because of violence inflicted on her by society and family." The findings on this issue are presented in Table 11.7 below.

**Table 11.7: Major Illnesses Affecting Girls**

<table>
<thead>
<tr>
<th>Responses</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weakness, incomplete nutrition, malnutrition, dizziness</td>
<td>27</td>
</tr>
<tr>
<td>Periods, white discharge</td>
<td>26</td>
</tr>
<tr>
<td>Tuberculosis</td>
<td>21</td>
</tr>
<tr>
<td>Head ache, body ache, stomach ache, back ache</td>
<td>14</td>
</tr>
<tr>
<td>Others</td>
<td>13</td>
</tr>
<tr>
<td>AIDS</td>
<td>11</td>
</tr>
<tr>
<td>Physical, mental, sexual exploitation</td>
<td>11</td>
</tr>
<tr>
<td>Cancer</td>
<td>5</td>
</tr>
<tr>
<td>Jaundice</td>
<td>5</td>
</tr>
<tr>
<td>Early marriage/child marriage</td>
<td>3</td>
</tr>
<tr>
<td>Malaria</td>
<td>3</td>
</tr>
<tr>
<td>Becoming pregnant</td>
<td>2</td>
</tr>
<tr>
<td>Don't know</td>
<td>2</td>
</tr>
</tbody>
</table>
Irritability, restless mind 2  
Fever 2  
Epileptic fits 1  
Appendicitis 1  
no response 38  

The girls responded in a varied manner when queried as to how they thought the health problems could be addressed. A majority of them did not know, leading to no response; among those who answered, a substantial number of girls emphasized on the importance of nutritious and timely consumption of food, as well as health check-ups and consumption of medicines when necessary. Seven girls emphasized on the need for girls to take care of their own health, and two girls on the importance of personal hygiene. More details are given in Table 11.8 below.

<table>
<thead>
<tr>
<th>Responses</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>eating good food, on time</td>
<td>22</td>
</tr>
<tr>
<td>visiting the doctor, taking medicines, getting treated</td>
<td>16</td>
</tr>
<tr>
<td>giving girls an opportunity to progress</td>
<td>8</td>
</tr>
<tr>
<td>girls face their problems without fear, raise their voice</td>
<td>8</td>
</tr>
<tr>
<td>Girls should take care of own health</td>
<td>7</td>
</tr>
<tr>
<td>change the way family and society thinks</td>
<td>4</td>
</tr>
<tr>
<td>girls should keep control over self</td>
<td>2</td>
</tr>
<tr>
<td>should be allowed to go outside</td>
<td>2</td>
</tr>
<tr>
<td>keeping cleanliness</td>
<td>2</td>
</tr>
<tr>
<td>Girls are allowed to marry according to own will</td>
<td>2</td>
</tr>
<tr>
<td>Gender discrimination should stop (girls and boys should not get different treatment)</td>
<td>2</td>
</tr>
<tr>
<td>Girls should take help of govt. institutions</td>
<td>2</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Responses</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Girls should be given security</td>
<td>2</td>
</tr>
<tr>
<td>people should come together and work</td>
<td>2</td>
</tr>
<tr>
<td>should not work too much</td>
<td>1</td>
</tr>
<tr>
<td>these issues can not be solved</td>
<td>1</td>
</tr>
<tr>
<td>people should become literate</td>
<td>1</td>
</tr>
<tr>
<td>There should be more govt. schemes</td>
<td>1</td>
</tr>
<tr>
<td>girls should be kept away from bad things</td>
<td>1</td>
</tr>
<tr>
<td>don't know</td>
<td>1</td>
</tr>
<tr>
<td>No response</td>
<td>43</td>
</tr>
<tr>
<td>Periods, white discharge</td>
<td>26</td>
</tr>
</tbody>
</table>

In order to understand the perception of girls to health better, the study required them to arrange the following issues from the most to least important: water, sanitation, food, nutrition and health. A majority felt that clean and potable water was the most important, followed by sanitation and nutritious food. Only four girls felt that food was a priority. Only six girls felt that all five factors are equally important. One girl expressed that despite these five factors, life was impossible without love! Table 11.9 presents the data compiled in this regard.

<table>
<thead>
<tr>
<th>Priority/ Rank</th>
<th>WATER</th>
<th>SANITATION</th>
<th>FOOD</th>
<th>NUTRITION</th>
<th>HEALTH</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>36</td>
<td>21</td>
<td>4</td>
<td>17</td>
<td>16</td>
</tr>
<tr>
<td>2</td>
<td>13</td>
<td>16</td>
<td>25</td>
<td>16</td>
<td>17</td>
</tr>
<tr>
<td>3</td>
<td>10</td>
<td>19</td>
<td>27</td>
<td>3</td>
<td>16</td>
</tr>
<tr>
<td>4</td>
<td>24</td>
<td>2</td>
<td>4</td>
<td>28</td>
<td>13</td>
</tr>
<tr>
<td>5</td>
<td>3</td>
<td>19</td>
<td>10</td>
<td>9</td>
<td>15</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Priority/ Rank</th>
<th>WATER</th>
<th>SANITATION</th>
<th>FOOD</th>
<th>NUTRITION</th>
<th>HEALTH</th>
</tr>
</thead>
<tbody>
<tr>
<td>All at the same level of importance</td>
<td>6</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No response</td>
<td>14</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
C7: Juvenile Justice

Although the girls were not aware of the concept of juvenile justice, some important issues pertaining to the same were queried. In response to a question on what happens to girls who commit crimes or run away from their homes, a majority of them indicated an awareness that such girls are vulnerable to being trafficked for sex work, and otherwise forced into prostitution. 20 girls thought that they were detained in jails, and only 13 were aware that they are detained in institutions, 7 more thought they were kept in orphanages, and 10 more felt they were kept "in a closed place". 11 girls were aware that "bad things" happen to such girls, but were unable to articulate what these were. It is interesting to note that three girls thought that such girls are tortured and isolated; one girl each thought that such girls lose their mental balance, commit suicide or are raped. This shows an awareness of the state of juvenile institutions and their treatment of girls among a limited number of girls. Graph 11F below depicts the findings in this regard.

Graph 11F: Fate of Girls who Commit Crimes / Run Away from their Home

The girls were also asked their opinion on whether or not such girls should be subjected to institutional care. An overwhelming majority of girls answered in the affirmative, for a variety of reasons such as that the girls will get good food and education, the institution will help such girls in rehabilitation, and as they need shelter when their family does not want them or when they are orphaned. 21 girls expressed their view against institutional care for such girls, citing reasons such as that the institution could be unsafe for them, that all girls have a right to live according to their own wishes and with their family and because such places are corrupt. One girl asked: "What is the point of keeping her in an institution? A girl who is not accepted by her parents, won't be accepted by anyone else either." One girl explained how adolescent girls who commit crimes do not do so intentionally or out of their own accord, and hence should not be imprisoned or punished. Table 11.10 below provides details of the findings in this regard.

Table 11.10: Opinion on Whether Girls who Commit Crimes / Run Away from Homes Should be Kept in Government-Run Homes

<table>
<thead>
<tr>
<th>Responses</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes- They will get food there, will be safe, will get education, good upbringing</td>
<td>22</td>
</tr>
<tr>
<td>Yes</td>
<td>14</td>
</tr>
<tr>
<td>Yes- so they realise their mistake/ get a chance to improve</td>
<td>13</td>
</tr>
<tr>
<td>Yes-It is necessary, family doesn't accept them</td>
<td>8</td>
</tr>
<tr>
<td>No- it could be unsafe there, they won't be listened to</td>
<td>6</td>
</tr>
<tr>
<td>No- they have a right to live according to their own wishes</td>
<td>5</td>
</tr>
<tr>
<td>Yes- have a right to progress, live life on their own terms</td>
<td>5</td>
</tr>
<tr>
<td>No- all girls like to live with their parents</td>
<td>3</td>
</tr>
<tr>
<td>No- they will spoil the others in such institutions.</td>
<td>3</td>
</tr>
<tr>
<td>Yes- They get peace of mind</td>
<td>3</td>
</tr>
<tr>
<td>Yes- it's good for orphaned girls</td>
<td>2</td>
</tr>
<tr>
<td>No</td>
<td>2</td>
</tr>
<tr>
<td>Don't know</td>
<td>1</td>
</tr>
<tr>
<td>Yes- because they didn't commit the crime on purpose</td>
<td>1</td>
</tr>
</tbody>
</table>
No- if she can't belong to her parents, she can't to anyone else 1
No- those places are corrupt 1
No response 25

C8: Girls at Work

Another issue on which girls were questioned was on remunerative work of girls. Almost all girls answered in the affirmative, when asked if adolescent girls should engage in remunerative work. When asked what kind of work adolescent girls should engage in, the top answers were working in office, teaching in schools and tailoring. Six girls expressed that girls should be allowed to work in jobs of their choice. Though a common perception is that beautician courses and related work is popular among adolescent girls, only one girl spoke about work at a beauty parlour as desirable for girls. Two girls opined that adolescent girls should not engage in remunerative work, but did not give reasons for such an opinion. Table 11.11 below provides details of the findings.

Table 11.11: Opinion on What Kind of Remunerative Work Girls should Engage in

<table>
<thead>
<tr>
<th>Responses</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Work in the office</td>
<td>18</td>
</tr>
<tr>
<td>In schools, teaching</td>
<td>12</td>
</tr>
<tr>
<td>Tailoring, cooking</td>
<td>11</td>
</tr>
<tr>
<td>As a doctor</td>
<td>10</td>
</tr>
<tr>
<td>In an NGO</td>
<td>10</td>
</tr>
<tr>
<td>In the bank</td>
<td>7</td>
</tr>
<tr>
<td>Government jobs</td>
<td>7</td>
</tr>
<tr>
<td>Girls should engage in work of their choice</td>
<td>6</td>
</tr>
<tr>
<td>Taking tuitions</td>
<td>6</td>
</tr>
<tr>
<td>As domestic maid</td>
<td>5</td>
</tr>
</tbody>
</table>

In malls 4
In the police 4
In business 3
Good, honourable work 3
As an Engineer 2
As a lawyer 2
No 2
That which is agreed to by family 1
In the beauty parlour 1

The girls were further queried on the type of remunerative work that adolescent girls should avoid. The responses carried strong moral overtones. A large number of girls spoke against prostitution, sex work, work in brothels, which they variedly described as "dirty" and "bad" work for girls. The next major response was that girls should avoid working in unsafe places, such as places where sexual harassment is more likely and girls' dignity is likely to be undermined. In this category, girls named bars, gyms and places that require night work and girls to wear short clothes. A smaller number of girls opined that work as domestic maids, sweepers and garbage collectors should also be avoided. Three girls opined that there is no work that girls should avoid. Table 11.12 below provides a greater insight into the responses of girls in this regard.

Table 11.12: Opinion on Remunerative Work that Adolescent Girls Should Avoid

<table>
<thead>
<tr>
<th>Responses</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial sex work/prostitution/work in brothels</td>
<td>35</td>
</tr>
<tr>
<td>Where girls could be unsafe</td>
<td>16</td>
</tr>
<tr>
<td>Work in a bar/dance bar</td>
<td>14</td>
</tr>
<tr>
<td>Domestic maid, collecting garbage, sweeping the road, working in own's house</td>
<td>13</td>
</tr>
<tr>
<td>Work that involves taking drugs, alcohol</td>
<td>5</td>
</tr>
</tbody>
</table>
In discussing barriers to girls' engagement in remunerative work, 39 girls highlighted the perception among family members as well as their communities, such as, that girls will bring dishonour to the family ("ladkiyan bigad jaayengi") due to the possibility of entering into relationships with boys, as major obstacles to girls' work. 15 girls opined that discrimination against girls was a major factor. 13 girls named sexual harassment or the fear of it as a barrier to remunerative work. Early marriage, traditions, caste system, objections by husband and his relatives were reasons cited by a few girls. See Table 11.13 for further details.

<table>
<thead>
<tr>
<th>Responses</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family members' / society's perception to</td>
<td>39</td>
</tr>
<tr>
<td>girls' remunerative work</td>
<td></td>
</tr>
<tr>
<td>Discrimination between boys and girls</td>
<td>15</td>
</tr>
<tr>
<td>Sexual harassment or the fear of it</td>
<td>13</td>
</tr>
<tr>
<td>Fear that girls will bring dishonour to family</td>
<td>12</td>
</tr>
<tr>
<td>Early marriage</td>
<td>3</td>
</tr>
<tr>
<td>Traditions/ caste system</td>
<td>2</td>
</tr>
<tr>
<td>Becoming a mother</td>
<td>2</td>
</tr>
<tr>
<td>In-laws/ husband</td>
<td>1</td>
</tr>
<tr>
<td>No response</td>
<td>25</td>
</tr>
</tbody>
</table>

In suggesting solutions to overcome obstacles that adolescent girls face in remunerative work, the girls aired varied views. A majority felt that parents should be made to understand and accept the wishes of girls. Some opined that they could seek assistance from the government. Eight girls opined that girls should become empowered, while two others opined that girls should unite and assert their rights. Graph 11G below provide further details of the findings:

**Graph 11G: Solutions to Overcome Obstacles that Adolescent Girls face in Remunerative Work**

**C9: State Responsibility**

The study also explored the girls' attitude towards the government, its functionaries, law and policy. On being asked if the law and police were friends or enemies of the girls, a majority (51 girls) indicated a positive attitude towards the same. A lesser number (21 girls) felt that law and police both helped girls as well as violated their rights. 27 girls were clear that the police and law were not on their
side, due to corruption, a perception of girls as sex objects, and perpetration of violence on them. One girl opined that laws and policies did not empower girls but perceived them to be guilty / trouble-makers. See Graph 11H below for further details.

Graph 11H: Attitude Towards the Law & Police

A majority (64 girls) expressed satisfaction with what the government was doing for them, 23 girls felt the government interventions for girls was highly inadequate, while 9 girls were appreciative of government initiatives but expressed that more needs to be done. Graph 11I below presents these findings.

Graph 11I: Adequacy of Government Interventions for Adolescent Girls

The girls also named various initiatives of the government towards adolescent girls’ rights that were significant in their opinion. Although they had a vague idea, many girls had difficulty recalling the names of specific programmes / schemes initiated by the government. Schemes related to education (such as anganwadis, free education for girls, hostel facilities, mid-day meal scheme and scholarships) and delaying marriage of girls were the most popular answers. Law against female sex-selective abortions and special provisions in infrastructure - such as separate seating arrangements in public buses and trains - were also appreciated. Interestingly, only one girl acknowledged the usefulness of the government-initiated 103 helpline that has been in existence for all women, senior citizens and children in Maharashtra since 2010. Table 11.14 below provides further details of the responses.

Table 11.14: Useful Initiatives and Schemes of the Government

<table>
<thead>
<tr>
<th>Responses</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schemes related to education</td>
<td>20</td>
</tr>
<tr>
<td>Delaying marriage of girls (upto 18 years)</td>
<td>7</td>
</tr>
<tr>
<td>Law against female sex-selective abortions</td>
<td>6</td>
</tr>
<tr>
<td>Special facilities in infrastructure - road, bus, railway facilities</td>
<td>5</td>
</tr>
<tr>
<td>Government institutions, homes</td>
<td>3</td>
</tr>
<tr>
<td>Health facilities - government hospitals</td>
<td>2</td>
</tr>
<tr>
<td>Employment opportunities</td>
<td>2</td>
</tr>
<tr>
<td>Kanyadaan scheme</td>
<td>1</td>
</tr>
<tr>
<td>103 Helpline</td>
<td>1</td>
</tr>
<tr>
<td>Law against sati</td>
<td>1</td>
</tr>
<tr>
<td>No response</td>
<td>32</td>
</tr>
</tbody>
</table>

As a logical corollary, the girls had many suggestions for the government with regard to empowerment of adolescent girls. Schemes and initiatives related to education (with a focus on higher education, more schools and colleges),
vocational training (such as mehendi and tailoring) and physical security topped the list. Table 11.15 below illustrates the varied suggestions made by girls, reflecting their multifaceted concerns.

Table 11.15: Suggestions for Government Initiatives / Schemes for Adolescent Girls

<table>
<thead>
<tr>
<th>Responses</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education &amp; vocational training</td>
<td>10</td>
</tr>
<tr>
<td>Security of girls</td>
<td>7</td>
</tr>
<tr>
<td>Reform in law</td>
<td>6</td>
</tr>
<tr>
<td>Police should be approachable and helpful</td>
<td>5</td>
</tr>
<tr>
<td>Focus on right to equality for girls</td>
<td>3</td>
</tr>
<tr>
<td>Remunerative work- including career counselling</td>
<td>3</td>
</tr>
<tr>
<td>Eradicate violence and restrictions on girls</td>
<td>2</td>
</tr>
<tr>
<td>Provide public toilets facility for girls</td>
<td>2</td>
</tr>
<tr>
<td>Ban on female sex-selective abortions &amp; proper implementation</td>
<td>2</td>
</tr>
<tr>
<td>Speedy justice</td>
<td>2</td>
</tr>
<tr>
<td>Safe homes for girls</td>
<td>2</td>
</tr>
<tr>
<td>Focus on Health and health care</td>
<td>1</td>
</tr>
<tr>
<td>Eradicate child marriage, increase age of marriage to 20 years</td>
<td>1</td>
</tr>
<tr>
<td>Create separate committee for girls</td>
<td>1</td>
</tr>
<tr>
<td>Government should assist us</td>
<td>1</td>
</tr>
<tr>
<td>Facilitate formation of women’s organisations</td>
<td>1</td>
</tr>
<tr>
<td>Control prices of essential commodities</td>
<td>1</td>
</tr>
<tr>
<td>Provide nutritious food for girls</td>
<td>1</td>
</tr>
</tbody>
</table>

In a related response, the girls also listed many issues that the government ought to take into consideration while formulating policies and schemes for the benefit of adolescent girls. Table 11.16 below gives a detailed list of the issues highlighted.

Table 11.16: Issues that the Government Should Take into Consideration While Formulating Policies & Schemes

<table>
<thead>
<tr>
<th>Responses</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Security</td>
<td>25</td>
</tr>
<tr>
<td>Education</td>
<td>24</td>
</tr>
<tr>
<td>Assorted facilities for girls</td>
<td>10</td>
</tr>
<tr>
<td>Health</td>
<td>8</td>
</tr>
<tr>
<td>Resource centres</td>
<td>7</td>
</tr>
<tr>
<td>Job opportunities</td>
<td>4</td>
</tr>
<tr>
<td>Food, water, clothes</td>
<td>4</td>
</tr>
<tr>
<td>No discrimination</td>
<td>3</td>
</tr>
<tr>
<td>Take immediate action against complaints</td>
<td>2</td>
</tr>
<tr>
<td>Law against child marriage</td>
<td>2</td>
</tr>
<tr>
<td>Efficient and safe public transport for girls</td>
<td>2</td>
</tr>
<tr>
<td>Clean public toilets</td>
<td>2</td>
</tr>
<tr>
<td>Rehabilitation</td>
<td>1</td>
</tr>
<tr>
<td>Don’t know</td>
<td>1</td>
</tr>
<tr>
<td>Guidance</td>
<td>1</td>
</tr>
<tr>
<td>Eradicating the practice of female sex-selective abortions</td>
<td>1</td>
</tr>
<tr>
<td>No response</td>
<td>47</td>
</tr>
</tbody>
</table>

C10: Empowerment of Adolescent Girls: Future Course of Action

The final question on what course of action adolescent girls can take to become empowered, met with animated and varied responses. Education as a source of empowerment was a predominant thought among girls, who emphasized on the need to gain education and step outside the four walls of the home. Some articulated that girls should focus on higher studies instead of an early marriage.
Many girls emphasized on the need for self-empowerment, expressed through varied expressions such as "standing on our own feet", "living with self-dignity", "raising voice against atrocities", "individually asserting own rights", "have strength to fight against problems" and "collectively demanding rights". Changing society's perception and treatment of girls was also mooted as a strategy for empowerment of girls. Graph 11J illustrates the details of the findings in this regard.

Graph 11J: Ways in Which Adolescent Girls Can Become Empowered

D. CONCLUSION
The importance of education for empowerment of adolescent girls has been reiterated repeatedly in the girls' responses to various questions. Most girls have spoken out against an early marriage and wish to opt for higher education and engage in remunerative work rather than an early marriage. This highlights the importance of vocational training and life skills education to adolescent girls. The girls' access to education is hampered by the health status of girls, as well as due to violence against girls (such as sexual harassment) and the fear of the same. The responses to the questionnaire indicate that sexual harassment (and the fear of it) and societal attitude that gives low value to girls' education are bigger obstacles to adolescent girls' education than financial restraints.

Many girls wish to marry at the age of 21 and above. A majority preferred arranged marriage as they feel the need for family support at a time of crisis within marriage. However, they strongly condemned 'honour crimes' and emphasized the right of girls to choose their life partner.

The girls' personal safety and security is also top-most on their minds, due to a high incidence of violence against girls. They see changing the mind-set of the family and society, as well as self-empowerment as ways of addressing violence against girls. From their responses to the questionnaire, it appears that they do not give adequate importance to issues pertaining to their health, food and nutrition. This is an area that requires the concerted efforts of civil society groups as well as governmental institutions.

Most girls who participated in the study wish to engage in remunerative work, and see family and societal attitudes as a major barrier to the same. The girls are acutely conscious of societal attitudes that discriminate against girls and perpetuate tacitly support violence against girls, and perceive the same as a major obstacle to their development to the fullest potential. This reiterates the emphasis in Chapter 10 of this book on state responsibility towards changing social attitudes, as a long-term strategy for preventing violence and discrimination against girls.

The girls who participated in the study have expressed the importance of the family and give due consideration to the feelings and wishes of parents, and attempt to balance the same with their own. This is particularly on issues of education, marriage and remunerative work. The girls spoke in favour of institutional care for juvenile girls (both those in conflict with the law as well as those in need of care and protection), while reiterating the need to ensure the girls' safety in such institutions.

Many girls perceive government programmes and interventions on behalf of adolescent girls in a positive manner, but feel that government policies should focus more...
on education and personal safety of girls. Their response to laws was not as enthusiastically supportive - probably stemming from the need for better awareness of various laws and how they impact the lives of adolescent girls. However, they emphasize the need for proper implementation of laws that protect and promote the rights of girls.

In conclusion, in claiming ownership of their future, the adolescent girls who participated in the study have emphasized the importance of self-assertion of rights as a key to their empowerment.

**ISSUES THAT EMERGE FROM THE STUDY**

**Adolescent girls:**
- are convinced about the importance of education for empowerment;
- perceive child / early marriages as a major impediment to their growth;
- aspire to be economically independent in their future life;
- are extremely concerned about personal safety and security;
- deplore honour crimes and assert the right of girls to choose their life partners;
- are conscious of societal discrimination and injustice against girls, and wish to see it eradicated;
- do not give adequate importance to aspects of health, food and nutrition;
- favour institutional care for adolescent girls within the juvenile justice system;
- feel positive about government schemes, but also emphasize the need for increased focus on education and personal safety of girls;
- reiterate the need for proper implementation of laws;
- cherish spending time with friends, going out, playing and studying;
- wish to focus on personality development and improving life skills, such as acquiring self-confidence and skills in independent decision-making; and
- believe that self-assertion of rights is a key to their empowerment.
Annexure 11a
Questionnaire For Adolescent Girls
1. Name 3 best things you like about being an adolescent girl
2. If you had to change 3 things about the situation in life that you are at right now, what would they be?
3. (Education)
   (a) Do you enjoy going to school? If yes, why? If no, why?
   (b) If you have not been to school, or dropped out, please give reasons for the same
   (c) What do you enjoy most about going to school?
   (d) According to you, what is the biggest obstacle for adolescent girls seeking education?
4. (Violence)
   (a) According to you, what is the worst form of violence that is inflicted on an adolescent girl?
   (b) Why do you think the family and community inflict violence / physical / mental / sexual harassment on adolescent girls?
   (c) What can you do to change the situation?
5. (Age & Agency in Marriage)
   (a) Would you like to get married? If yes, at what age? Is this different from the age at which your parents will get you married?
   (b) Will you go for self-arranged (love) or arranged marriage? Give reasons
   (c) What is your opinion about girls being killed by their families for eloping with a partner of their choice? According to you, what should be done to change the situation?
6. (Health)
   (a) What do you see as 4 major health issues that adolescent girls face today?
   (b) How do you think these problems can be solved? What measures should be taken?
   (c) Water, sanitation, food, nutrition, health - arrange this according to the priority you give - starting from most important to least important
7. (Juvenile Justice)
   (a) What do you think happens to girls who commit crimes or run away from homes? Where are they kept?
   (b) Do you think they should be kept there (in government-run homes)? If yes, why? If not, why not?
8. (Work)
   (a) What kind of remunerative work should adolescent girls engage in?
   (b) What kind of work should girls avoid?
   (c) What, according to you, is the biggest barrier preventing adolescent girls from doing remunerative work?
   (d) What solution would you suggest for this situation?
9. (State responsibility)
   (a) In your opinion, is the police a friend or enemy of adolescent girls?
   (b) Are you happy with what the government is doing for adolescent girls?
   (c) Name significant initiatives taken by the government for the benefit of adolescent girls
   (d) Name issues that the government should keep in mind, when it writes policies / prepares programmes for adolescent girls.
10. (Role of adolescent girls) How can adolescent girls become empowered? What can help improve their situation?

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Glossary

1. **Ad hoc** - Connotes a makeshift solution, inadequate / improper planning or act of an arbitrary nature

2. **Adivasi** - Literally means "original dwellers / inhabitants" and refers to indigenous peoples. Legally, in India, adivasis are counted among the groups collectively named Scheduled Tribes.

3. **Anganwadi** - Literally means "court yards", anganwadi workers are employed by the Department of Social Welfare to distribute nutrition supplements to pregnant women and children, and to provide non-formal education for children upto 6 years of age, under the Integrated Child Development Scheme (ICDS)

4. **Apni Beti Apni Daulat** (Our Daughters Our Wealth) - A conditional cash transfer scheme, intended as an incentive to increase the age of marriage of the girl, as well as for improving her health, education and nutritional status

5. **Arya Samaj** - A Hindu reform movement founded by Swami Dayanand Sarawati, inaugurated in the 1870s and popular with the emergent commercial castes in north India, particularly in Punjab.

6. **Balikasanghas** - Collectives of young girls

7. **Beedi** - A country-made thin cigarette

8. **Bona fide** - in good faith

9. **Dalit** - The term means "oppressed people" and refers to persons belonging to a category at the lower end of the caste system, who are considered "untouchables". They are discriminated against and treated in an inhumane manner

10. **De facto** - In fact / reality

11. **De jure** - In law

12. **Devadasi** - A girl or woman who is dedicated to the service of any deity, idol, object of worship, temple, other religious institution through a ceremony; the practice was declared illegal through state legislations in Maharashtra, Andhra Pradesh, Karnataka and other states. While colonial views on devadasis are hotly disputed by several groups in India, it is nevertheless an example of institutionalised exploitation of women and girls in the name of religion, tradition and custom, fuelled by patriarchy and the caste system

13. **Dhaba** - local road-side eateries

14. **Division Bench** - a panel of two judges of the High Court or Supreme Court, which hears and adjudicates on a case

15. **Full Bench** - a panel of three or more judges of the High Court or Supreme Court, hearing and adjudicating on a case. In the Supreme Court, a Full Bench goes up to nine judges for determining Constitutional issues.

16. **Jat** - are an influential, land-owning group in parts of North India

17. **Jogini** - It is a system in Andhra Pradesh, whereby women and girls of Mala and Madiga castes, considered as lower castes, are sexually exploited in the name of religion and custom. The jogini does not receive payment for her "services". Like the devadasi system, it is another example of institutionalised exploitation, backed by patriarchy and caste system. It is considered to be a system of sexual slavery.

18. **Khap panchayat** - A local adjudicatory body which act like a kangaroo courts and issue social dictats that are enforced in the villages, mostly in the state of Haryana

19. **Kishori Shakti Yojana** (Adolescent Girls' Empowerment Programme) - It was launched in 1997 and implemented as a part of Integrated Child Development Services; focusses on overall development of girls in the age group of 11-18 years

20. **Lok Sabha** - House of the People; Lower House in the Indian Parliament

21. **Mahisasanghas** - Women's collectives

22. **Mala fide** - In bad faith

23. **Mandir** - Temple

24. **Nari Niketan** - Government-run protective homes for girls and women

25. **Panchayat** - Village level elected body
26. **Post mortem** - Also called autopsy, it refers to a medical examination of the body of the deceased person, to determine the cause of death.


28. **SABLA** - A comprehensive government scheme addressing adolescent girls' empowerment through nutrition, vocational training and life skills education. It was launched in 2011.

29. **Sachar Committee** - The Rajinder Sachar Committee was set up by the Indian government in 2005 to prepare a report on the social, economic and educational status of the Muslim community. The report was presented in the Indian Parliament in November 2006, and contains many recommendations to mainstream Muslims in India.

30. **Sarva Shiksha Abhiyan** - It is the Indian government's flagship programme for achieving universalization of education in a time-bound manner.

31. **Sati** - The legal definition, as contained in The Commission of Sati (Prevention) Act 1987, is as follows: "sati" means the burning or burying alive of -

   (i) any widow along with the body of her deceased husband or any other relative or with any article, object or thing associated with the husband or such relative; or

   (ii) any woman along with the body of any of her relatives, irrespective of whether such burning or burying is claimed to be voluntary on the part of the widow or the women or other-wise;

32. **Status quo** - literally means "the state in which", connotes the current or existing situation.
Rights of Adolescent Girls In India:
A Critical Look At Laws and Policies
(With Introduction by Prof. Vibhuti Patel)

The adolescent experience of girls and boys is admittedly different. This has implications for later life. Yet there is hardly any consideration for this in rights of adolescent girls in law and policy. Their rights are bracketed with child rights and women’s rights. This book critically looks at laws and policies in India and in international conventions and comments on their impact on girls’ rights in India.

Author Saumya Uma is a consultant on gender, human rights and the law. She holds a masters’ degree in human rights law from the University of Mumbai and in international human rights law from the University of Nottingham, UK. She is presently working as an international consultant for UN Office of the High Commissioner on Human Rights (OHCHR) on the issue of victim and witness protection with an integration of gender concerns.

Prof. Vibhuti Patel is the head of the post graduate department of Economics at the SNDT Women’s University. She is actively associated with several women’s groups and projects and has written extensively on issues of women and girls.

Vacha is a resource centre for women and girls.