



## **Submission on the Third and Fourth Periodic Report of India to the Committee on the Rights of the Child**

September 19, 2013

We write in advance of the Committee on the Rights of the Child's pre-sessional working group on the periodic report of India. We hope our submission will inform your consideration of India's compliance with the Convention on the Rights of the Child (CRC).

India has passed two major laws in recent years toward protection of child rights: the Right of Children to Free and Compulsory Education Act, 2009<sup>1</sup> and the Protection of Children from Sexual Offences Act, 2012.<sup>2</sup>

The Right to Education Act promises universal access to eight years of education to every child across the country, based on principles of equity and non-discrimination. This is an important step toward universalizing elementary education in a country with only 74 percent literacy.

The Protection of Children from Sexual Offences Act is a major step forward in addressing sexual abuse of children, disturbingly common in homes, schools, and residential care facilities. The Act incorporates all forms of child sexual abuse as specific criminal offenses for the first time, establishes guidelines for the police and the courts to deal with victims sensitively, and provides for the creation of specialist child courts. Earlier shrouded in silence, there has been increased reporting and awareness on the issue in the last year. Numerous cases of child sexual abuse are now being tried under the new law.

All state governments are expected to establish independent commissions for the protection of child rights, which are also responsible for monitoring the implementation of the two recently enacted laws. In 2009, the central government launched an ambitious nationwide program, the Integrated Child Protection Scheme, to strengthen existing child protection measures, and create new ones, such as a network of district-level social workers. Once fully implemented, the scheme

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<sup>1</sup> Right of Children to Free and Compulsory Education Act, 2009, No. 35 of 2009.

<http://www.azimpremjiifoundation.org/sites/default/files/userfiles/files/RTE-Act.pdf> (accessed September 19, 2013).

<sup>2</sup> Protection of Children from Sexual Offences Act, 2012, No. 32 of 2012

<http://wcd.nic.in/childact/childprotection31072012.pdf> (accessed September 19, 2013).

facilitates the creation of child welfare committees in every district, designed to oversee the care of vulnerable children.<sup>3</sup>

However, significant challenges remain in addressing both universal elementary education and child sexual abuse in India. More than three years after the Right to Education Act came into force, retention of children in school remains a challenge, particularly when it comes to the country's most vulnerable and marginalized populations such as Dalits, Adivasis (tribals), Muslims, and girls. The government's lack of proper implementation and a failure to hold to account authorities responsible for monitoring and tracking these children has left millions of vulnerable children without basic education and at risk of child labor. In addition, many adolescent girls are compelled to drop out and forced into child marriage to protect them from sexual abuse.

Addressing child sexual abuse is a challenge all over the world, but as Human Rights Watch documented in its January 2013 report *Breaking the Silence*, in India shortcomings in both state and community responses add to the problem.<sup>4</sup> The criminal justice system, from the time police receive a complaint until trials are completed, needs urgent reform. Poorly trained police often refuse to register complaints. Instead, they subject the victim to mistreatment and humiliation. If the victims are poor or belong to marginalized communities such as Dalits, they often face greater mistreatment at the hands of investigating authorities. They will also be subject to threats and intimidation from both police and abusers to withdraw their complaints. Victims lack protection during investigation and trial, and support provided to victims and families, is often inadequate. The government has also failed to generate effective oversight mechanisms and enforce key safeguards, leaving children vulnerable to abuse in orphanages and other institutions.

In India most cases of child sexual abuse go unreported due to fear of social stigma and lack of faith in government institutions. According to UNICEF, one in three rape victims in India is a child and more than 7,200 children, including infants are raped every year in the country.<sup>5</sup>

The sexual abuse of children in residential care facilities for orphans and other at-risk children is a particularly serious problem. Inspection mechanisms are inadequate in most parts of the country. Many privately run facilities are not even registered. As a result, the government has neither a record of all the residential facilities operating in the country nor a list of the children they are

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<sup>3</sup> Ministry of Women and Child Development, Government of India, "Integrated Child Protection Scheme," 2009, [http://wcd.nic.in/icpsmon/st\\_abouticps.aspx](http://wcd.nic.in/icpsmon/st_abouticps.aspx) (accessed September 19, 2013).

<sup>4</sup> Human Rights Watch, *Breaking the Silence: Child Sexual Abuse in India*, January 2013, <http://www.hrw.org/reports/2013/02/07/breaking-silence>.

<sup>5</sup> "UN in India condemns the gang rape of a student in New Delhi," UNICEF press release, December 31, 2012, [http://www.unicef.org/media/media\\_67097.html](http://www.unicef.org/media/media_67097.html).

housing. Abuse occurs even in supposedly well-run and respected institutions because of poor monitoring.

### **Failure of the Justice System**

Many victims and the adults supporting them endure terrible experiences that add to their trauma. These can include intimidating interviews by police officers, degrading and painful medical examinations, and intimidation by perpetrators to drop charges. Court cases too can be unpleasant experiences for the child since they can last for years and involve unnecessarily stressful cross-examinations. This can deter people from coming forward and allow perpetrators to get away with their crimes unpunished.

Several state governments have now issued strict instructions to ensure that children be interviewed sensitively, medical examinations only conducted when necessary and with the consent of the child and their guardian, and special child-friendly courts established for prosecuting these cases. However, progress has been patchy, with a number of states still lagging in these initiatives.

### **The Police**

The police have a crucial role in combating child sexual abuse because they are the first point of contact for anyone wishing to report a case, but they lack adequate training in handling cases of sexual violence. Police officers often refuse to file complaints and in numerous cases, encourage victims to retract their complaint under pressure from perpetrators. In order for sexually abused children to receive proper attention to their complaints, the Committee on the Rights of the Child should urge the Indian government to urgently embark upon reform to create a better trained and more accountable police force.<sup>6</sup>

### **Medical Treatment and Examination**

After law reforms in 2012 and 2013, victims of child sexual abuse have a right to seek medical treatment and the collection of medico-legal evidence to the extent that such evidence exists. The findings of the medico-legal examination are commonly known as medico-legal reports, and can play an important part in whether or not the police and prosecutors believe a victim's account.<sup>7</sup>

Many doctors in India simply do not have the skills to perform such an important and sensitive role. Many acts of child sexual abuse do not involve visible forms of violence or penetrative sex,

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<sup>6</sup> Human Rights Watch, *Broken System: Dysfunction, Abuse, and Impunity in the Indian Police*, August 2009, <http://www.hrw.org/reports/2009/08/04/broken-system-o>

<sup>7</sup> Human Rights Watch, *India – Dignity on Trial: India's Need for Sound Standards for Conducting and Interpreting Forensic Examinations of Rape Survivors*, September 2010, <http://www.hrw.org/reports/2010/09/06/dignity-trial-o>

and victims often wash themselves after being assaulted. Especially in the case of child sexual abuse, victims come forward to report days, months, or sometimes even years after the abuse making it difficult to gather medical evidence. Without noting these challenges, many doctors simply report there is no evidence of rape or child sexual abuse.<sup>8</sup> Also, when doctors become focused on gathering evidence, they often fail to consider that their role also includes sensitively treating and counseling the child.

A regular part of the examination in many parts of India of female rape victims, including children, is the “two-finger test” to check the size and laxity of her hymen and vagina to determine whether penetrative sex has occurred, drawing conclusions about whether there was penetration or not depending on the number of fingers that passed. Especially in the case of older girls and adolescents who report rape, at times doctors conclude that she was “habituated to sex,” a degrading comment that alludes to the past sexual history of the victim.

In March 2013, Indian evidence law was amended to prohibit evidence of past sexual experience of victims in rape trials to discourage such arguments and the use of such observations by doctors during criminal trials. In April 2013 the Indian Supreme Court issued a judgment criticizing the two-finger test calling it a violation of a right to privacy and dignity. These positive and welcome changes are yet to trickle down and take actual effect on the ground. As a result, the finger test remains a standard practice in many Indian hospitals, even though forensic experts say that the test has no scientific value<sup>9</sup> and a top-level government committee has called for it to be abolished because it “heighten[s] the trauma for victims of sexual abuse.”<sup>10</sup> Human Rights Watch believes that where such tests are carried out without informed consent, they constitute assault and are a form of inhuman and degrading treatment.<sup>11</sup>

A first step to eradicating this decades-long practice is the development of a uniform protocol for medical treatment and examination across India, which the Indian Health Ministry has taken as a serious concern. The Health Ministry has condemned these tests, recognized the need for uniform guidelines, and constituted a committee to develop a protocol for medical treatment and

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<sup>8</sup> Human Rights Watch, *Dignity on Trial*.

<sup>9</sup> Dr. Harish Pathak, a professor of forensic medicine in Mumbai, told Human Rights Watch that “the two-finger test is not scientific. What is scientific? Scientific evidence is that which is objective, and when the test is repeated by anyone, then the same results will be achieved. The two-finger test is a subjective test. There are many variables.” See Human Rights Watch, *Dignity on Trial*.

<sup>10</sup> Ministry of Women and Child Development, Government of India, “XII Five Year Plan Report of the Working Group on Women’s Agency and Empowerment,” February 12, 2012, [http://planningcommission.nic.in/aboutus/committee/wrkgrp12/wcd/wgrep\\_women.pdf](http://planningcommission.nic.in/aboutus/committee/wrkgrp12/wcd/wgrep_women.pdf) (accessed June 6, 2012), p. 34.

<sup>11</sup> Human Rights Watch, *Dignity on Trial*.

examination for sexual assault victims, including child sexual abuse. The committee's work is still underway.

However, unless the Health Ministry simultaneously develops a concrete plan to ensure that such a protocol is adopted across India, the interventions of the ministry will have limited impact. In order for sexually abused children to have quality and dignified medical care across India, the Committee on the Rights of the Child should urge the Indian government to ensure these measures are adopted uniformly.

### **The Courts**

Court proceedings in India generally are a long and trying ordeal. In child sexual abuse cases, where the burdens of testifying repeatedly and over long periods of time fall on already traumatized children as well as parents, the complainants end up feeling battered by the process, in some cases leading them to withdraw their complaints. In an effort to address this, the Protection of Children from Sexual Offences Act recommends special child courts, but only a few states have implemented the directives.

### **Suggested Questions to the Government of India:**

- What is the status of the implementation of the Integrated Child Protected Scheme? Do all states have a functioning child welfare committee and how many of them spent all the money allocated by the government last year?
- How many states have established child rights commissions to evaluate implementation of the new laws? Have the commissions created been effective?
- Has the government set a deadline to develop and adopt a protocol for the medical treatment and examination of victims of sexual assault, including child sexual abuse? Given that health is not a federal (or union) subject in India, what strategy will the government use to ensure that all public health facilities across the country adopt and use the protocol?
- What steps have been taken by the Health Ministry to print and distribute medico-legal protocols across the country, give incentives for their adoption by public hospitals across India, and train medical staff to provide sensitive treatment and examination services to victims of sexual assault who seek them?
- How many states have developed guidelines for school administrators and teaching staff on protecting children from sexual abuse, recognizing abuse, handling disclosure of abuse

and taking appropriate action when allegations arise? How many states have disseminated these guidelines and ensured that they are adopted and implemented by all the schools?

- What is the status of police reforms as recommended by the Supreme Court? How many states have established a complaint mechanism to address police abuse and dereliction of duty?
- What is the system of vetting of staff members in residential care facilities? Do they receive training in child protection?
- How many states have established “child courts” to handle cases of child abuse as provided for under central government schemes?

### **Recommendations to the Government of India:**

#### *On Effective Monitoring and Accountability*

- Ensure strong and independent child rights commissions and child welfare committees in every state with the capacity to monitor and evaluate protection mechanisms for children. State governments should properly and promptly utilize the resources allocated to them to create effective child welfare committees and commissions.
- Facilitate training of all child commission and child welfare committee members on India's juvenile justice and child protection systems. Prohibit government officials and those running children's residential care facilities from being appointed as members to prevent conflicts of interest.
- Amend the Juvenile Justice Act to require registration and the meeting of specified standards by children's residential care facilities before they open. Establish penalties for facilities that fail to register. Conduct a survey of all existing institutions. All institutions housing children should have regular and periodic inspections that include independent and confidential interactions with children and staff.

#### *On Implementation and Raising Awareness*

- Implement the Protection of Children from Sexual Offences Act and give priority to the training of the police, court personnel, government and private social workers, child welfare committee members, and doctors who work with children.
- Develop and disseminate guidelines for school administrators and teaching staff on protecting children from sexual abuse, recognizing abuse, appropriately speaking to

victims, handling disclosure of abuse, and taking appropriate action when allegations arise.

- Initiate and institutionalize a curriculum for children to prevent sexual abuse by helping children participate in their own protection through age-appropriate information, skills, and self-esteem as part of the government's right to education policy.

#### *On Strengthening the Justice System*

- Adopt and implement a protocol for the medical treatment and examination of victims of child sexual abuse, in accordance with guidelines developed by the World Health Organization. Ensure that physicians and other medical staff respond to cases of sexual abuse in a sensitive manner that minimizes invasive examination and provides access to continued reproductive, sexual, and mental health services. Train doctors in all public health facilities to adopt and use this protocol.
- Establish a policy that under no circumstances should the police attempt to dissuade or intimidate a complainant, with disciplinary consequences for those who do so.
- Ensure protection to the victim during the investigation and after the trial ends. Ensure that professional counseling services are available for children who have suffered sexual abuse.