



JUSTICE TO CHILDREN



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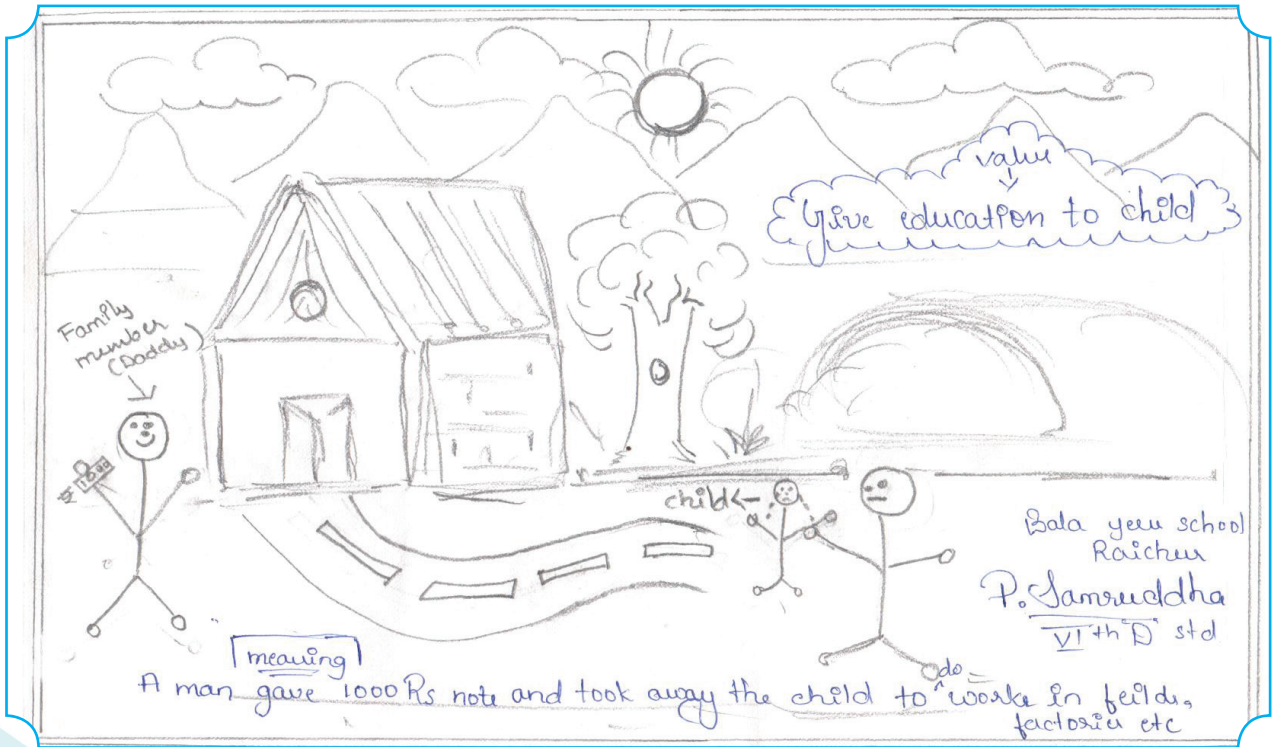
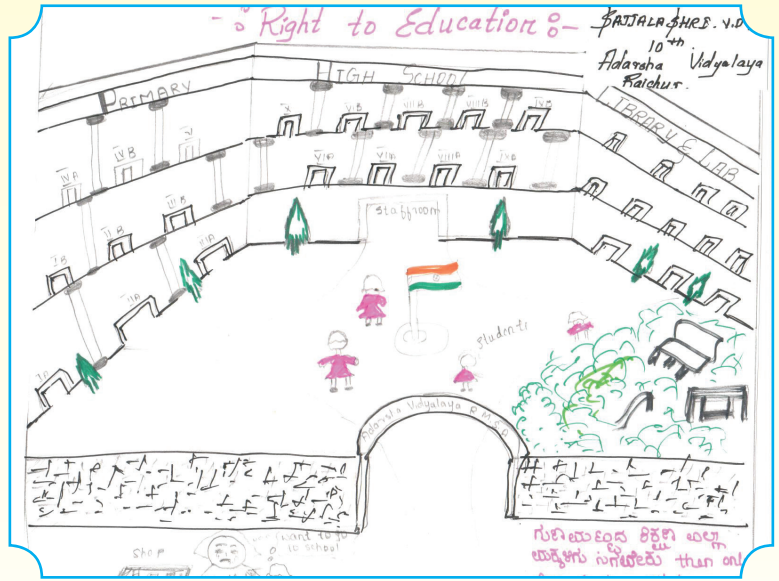
NEWSLETTER, CENTRE FOR CHILD AND THE LAW (CCL),
NATIONAL LAW SCHOOL OF INDIA UNIVERSITY (NLSIU)

**DETENTION
VERSUS AN
ENABLING
CHILD
FRIENDLY
LEARNING
PROCESS &
ENVIRONMENT**



**IMPLEMENTATION OF
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Children's drawing corner





DETENTION VERSUS AN ENABLING CHILD FRIENDLY LEARNING PROCESS & ENVIRONMENT



Dr. Niranjanaradhya V.P.
*Universalization of Equitable
Quality Education Programme*

Independent India took innumerable measures in the last seven decades to universalize free and compulsory education in accordance with the Constitutional aspirations. It is important to note that all these efforts yielded very positive results in terms of quantitative expansion of the education system to provide universal access to schooling. This expansion of providing access helped in a big way to achieve universal enrolment. However, despite this tremendous achievement in access and enrolment, the challenge of bringing dropouts and non-school going children to school remains a herculean task. This is one of the challenging tasks before the nation. The second important challenge before the nation is to ensure quality education to all children in schools. Therefore, the centrality of today's debate in relation to universal

education is the critical issue of creating an enabling learning condition in schools, in order to make the learning process more meaningful, productive and child friendly to achieve the much talked quality education.

The Right of Children to Free and Compulsory Education Act (hereafter, the Act) was enacted in 2009 to operationalize the 86th Constitutional Amendment Act. The Act came into force on 1st of April 2010. Despite many flaws in the Act, the Act was welcomed by academic institutions, civil society organizations and individuals, as a first step towards realizing the right to education. Some of the progressive provisions in the Act include sections 13, 14, 15, 16, 17, 24 (d) and 29 (2). It is important to note that Section 16 of the Act prohibits holding back a child in any class and/or expulsion from the school till the completion of elementary education.



The provision in the Act reads as “No child admitted in a school shall be held back in any class or expelled from school till the completion of elementary Education”.

In fact, several primary stakeholders, including teachers and parents were agitated about the provision in the Act and sought to reintroduce the detention policy from the day the Act was implemented. The issue was also echoed in the 59th Central Advisory Board of Education (CABE) committee meeting. Finally, the CABE committee decided to constitute a Committee for assessment and implementation of Continuous and Comprehensive Evaluation (CCE) in the context of no detention provision in the Act. However, there was an agreement that Board Examinations are not required and guidelines for implementation of CCE need to be evolved for examining and testing the child during the elementary education cycle.

In light of the ongoing debate on ‘no detention provision’, one should recognize that there have been a lot of misconceptions and misgivings, not only amongst parents and teachers but also amongst the members of the highest decision making body like CABE, the senior officials of MHRD, the honourable Minister and academicians. Unfortunately, these misconceptions have carried on till date. This calls for understanding the spirit and rationale behind the provision from a historical perspective. As we know, examinations in education system were often used as a tool to eliminate children from the system on the pretext of poor performance. Such children were asked to repeat the same class and many a times, children were pushed out

of the system considering them as ‘failures’. This is nothing but a new form of denial of education.

The ‘no detention’ provision under RTE Act does not imply abandoning the procedures required to be followed to assess the child’s learning from time to time. Nevertheless, Section 24 (d) and (e) of the RTE Act, as part of teachers’ duties places the responsibility of assessing the learning ability of each child and accordingly supplement additional instruction, if required. Further it places onus on the teachers, to hold regular meetings with parents and guardians to appraise them about the regularity in attendance, ability to learn and progress made in learning, in order to keep a constant vigil on the progress of learning of every child. Moreover, the RTE Act provides for ‘comprehensive and continuous evaluation of child’s understanding of knowledge and his or her ability to apply the same under section 29 (h).

As we know, in reality, every child has the same potential for learning. Branding of children as weak, slow, dull or failed is not because of any inherent drawback of the child, but most often the inadequacy of the teaching and lack of a learning environment, and the ability of the system to handhold or to help the child to realise his/her potential in a meaningful and holistic manner. Therefore, the ‘failure’ of the child is the failure of the system as a whole, rather than that of the child. Instead of proposing a systemic change in the overall classroom transaction and learning process, and victimizing children for no fault of theirs, is a real mockery. This requires a revamp in teacher education both in terms



of content and structure to enhance the quality of the learning process rather than punishing the child through detention. There is no research study that suggests the quality of learning of the child improves if the child is failed or detained. Instead, it results in more children being pushed out/dropout from the system, especially girl children from marginalized sections.

Now, the union cabinet allowed schools to detain students in the same class. The Amendment bill has already been introduced in the Lok Sabha on 11th August 2017 to amend section 16 of the RTE Act to remove the ‘no detention policy’. It is in this context that the move by the MHRD Minister Mr. Javadekar to dilute a few progressive provisions of the RTE Act has come to severe criticism and opposition from the civil society organizations working for the implementation of RTE Act. This is nothing but onslaught on the right of the child to schooling. In fact, the dilution started with an amendment in April 2017, to mend the Act in order to extend the time period to provide trained teachers in all schools. Earlier the deadline was 31st March 2015. Now it is extended to March 31st 2019.

On the other hand, the compliance of norms set in the schedule of the Act remains at 8 to 10 percent in the country. No honest efforts were made by the Centre in the last three years to implement the important provisions of the Act to create an enabling learning environment for children for effective learning process. The biggest irony is that after this dilution, nothing much is left in RTE Act for quality education. We need to implement this Act to send children to private schools under 25 percent reservation as per section 12(1) (c) to accelerate privatization and commercialization through state sponsored privatization under RTE Act.

To conclude, the decision of the cabinet to detain children followed by an amendment bill by the MHRD Minister to scrap “no-detention” provision in the RTE Act is myopic and ill-conceived. This ill-informed move will go against the very spirit of RTE Act and negate section 3 of the Act that assures free and compulsory elementary education as a fundamental right to all children till the completion of elementary education making the Act redundant.



Voices of Children

Children’s Opinion on

‘No detention Policy’ within schools

If children fail in a class and are retained, they will not come to school to pursue their studies, and will remain in their house. That’s why, we should not fail them.

- **Latha**, 3rd standard student.

We should not fail, rather teach the students well in the school itself. If taught well, there is no need to fail anyone. Therefore, teaching well is important and not failing the student.

- **Madan**, 4th standard student.

Children must be detained, else the lack of fear that one would not fail would lead to disinterest in studies. They will not even show interest in learning. Thus, failing the student is better, then atleast due to fear, they will begin to learn.

- **Lakshmi**, 5th standard student.

Children who are backward in learning being detained is correct. Although you might have knowledge in some topics, it is important to perfectly learn everything. Thus, according to me detention is better.

- **Mohan**, 6th standard student.



Thoughts expressed by children is highly influenced by the learning and teaching environment. In primary schools within “Nali-Kali” system (Activity Based Learning), teachers

emphasize on the importance of inclusive learning and create an enabling environment, whereas in higher classes, such positive influences seem to decrease.



Adolescent Love affairs under the radar of **POCSO** Act

“I fell in love with my neighbor (a 21 year old boy) few years back. He belonged to a different caste. When my family got

to know about our relationship, they were against this relationship because he belonged to a lower caste and therefore forced me to get married to someone they knew. I was left with no choice but to elope with my boyfriend. At that time I was 17 years old. I knew that in a few months I will turn major, and then I can live without fear.

We went to his native village in Andhra Pradesh, got married in a temple and started living together in a rented house. In the meanwhile, my family filed a kidnapping case against him. One day Police came to the village searching for us. At that time my husband was not home, so they took me to the court and later admitted me here (government-run child care institution), since I refused to go home with my parents. At the time of arrest, I was 7 months pregnant with our child”.

When enquired about the boy she says, “My husband is scared of the Police and therefore he is absconding”. She is unaware that her husband is booked under POCSO and incarcerated. Today this girl has a 2 month old baby girl and says, “I will soon turn 18 and then he will come to take me and my baby”. Both the mother and the baby are waiting to go out of the child care institution.

We find similar situation in many of the “consensual relationship” cases booked under POCSO, where young victims are dragged into the criminal justice system. There is an urgent need for the State to come up with provisions, that respects the dignity of the adolescent to indulge in relationships.

Madiwala

(Observation Home) **Boys** - A Poem by Children in Conflict with Law

*Look at the art on the walls,
Look at the beauty within the art,
Look at the happiness on the face,
Look at the pain in the eyes.
Jump with joy admiring beauty,
Even if the mind is filled with pain,
Look at yourself in the art.*

*Look at the grief in the rooms of remand home,
Look at the grief in one’s laugh,
Look at the eyes of boys and see who these boys are.
We are happy when we dance,
We are happy when we sing,
But who will pay heed to us?
Please notice me, I have been waiting.*

*Who are these boys, from where do they come from?
Drink liquor, smoke cigarette,
Terror to police, and commit mistake under influence.
Police search for us,
We know we will not be spared when found.*

*Life in remand home ain’t easy,
Chapati here is like stone,
Milk here is like water,
Ragi (millet) ball here is like rock,
Pay heed to our difficulties.*

*No one wants us, none in the society,
Mother has too much grief,
We serve our term and learn from it.
Mother comes and takes us
Madiwala boys don’t forget remand home.*



The process of coming up with the criteria to reach those respective number of people as eligible households has been quite a perplexing one. Although a rational method of selection of beneficiaries would have been deciding upon the criteria first and then identifying the people as per that criteria.

Implementation of National Food Security Act 2013: Some Observations and Concerns



Dr. Neethu Sharma
Right to Food Programme

It is going to be almost four years soon since the National Food Security Act 2013 (NFSA) came into being with an objective to “provide for food and nutrition security in human life cycle approach by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and for matters connected therewith of incidental hitherto”. Implementation of this law rides more on the willingness of the state government as well as resources available to them. Last issue of CCL newsletter carried a write up on the implications of NFSA, on the entitlements and trends in various states with regard to defining the entitlements across various schemes as specified in NFSA. An attempt is being made now to capture the overall trends in various states with specific focus on the process

¹ Preamble of National Food Security Act 2013



of identification of beneficiaries, issues confronted by the state governments, and the setting up of monitoring and grievance redressal mechanisms.

Overlaps in legal framework

Both, the state government and the prospective beneficiaries have been grappling with a number of issues as regards its implementation. Preliminary observations had pointed towards ambiguity as regards the State Rules under NFSA 2013 and the TPDS Control Order issued under Essential Commodities Act. Many aspects of targeted public distribution system, such as the vigilance committees is to be set up at various levels, social audits and even the penalties with respect to the violations pertaining to TPDS were already being dealt with by the respective TPDS Control Orders.

Who gets: Criteria for identification?

NFSA seeks to cover 75% of rural and 50% of urban population, but the percentage and the proportion of population vary across states as per the poverty estimates. All the state governments were supposed to cover the population under NFSA as per the Targeted Public Distribution Control Order 2015².

A relatively complex process for the state governments has been the constantly evolving criteria for identification of the eligible households as per section 10 of NFSA. The process of coming up with the criteria to reach those respective number of people as eligible households has been quite a perplexing one. Although a rational method of selection of beneficiaries would have been deciding upon the criteria first and then identifying the people as per that criteria. However, given the need to arrive at the 'magic figure of 75% rural and 50% urban population', most of the state

governments had to revisit the identification criteria several times. For example, Rajasthan state government had to change the criteria several times following the objections raised, wrongful exclusions and problem with arriving at the exact number. In many states, especially in southern India, state governments had to make sure that the people covered for the purposes of benefits under targeted public distribution system prior to NFSA are continued to cover.

Ambiguity regarding categories of beneficiaries

With the passage of NFSA, one more differentiated category has been created under NFSA, apart from the existing categories of BPL, APL, and AAY. This has also caused confusion as regards to the quantum of various benefits available to these categories. In some cases, NFSA has turned out to be regressive for certain groups/households, because of inter category movement or exclusion from the category of eligible household owing to the revised criteria. The fact that only a few benefits have been converted into legal entitlements has turned out to be, as expected, detrimental to the range of benefits that people received. There have been reports from several states of non provision of pulses, and sugar, among others, through fair price shops post NFSA. However, Maharashtra has been an exception, post amendment of National Food Security Act, 2013 in its application to the Scheduled Areas of the state, to improve the nutrition status of children below six years, pregnant women and lactating mothers. Maharashtra is an example to prove that, if the state governments want they can expand the scope of entitlements, both in term of quantum and coverage.

² [https://pdspportal.nic.in/files/PDS\(Control\)%20Order,%202015.pdf](https://pdspportal.nic.in/files/PDS(Control)%20Order,%202015.pdf)

Maharashtra: Expanding the scope of entitlements invoking Section 31 (1) and (2) of NFSA and Schedule V of Constitution of India

In a notification issued by the Governor, the word 'Take Home Ration' used in the National Food Security Act (Schedule II) has been replaced by the words 'Hot Cooked Meal'. With a view to improving the nutritional status of children below six years of age and pregnant and lactating women in the Scheduled Areas, the Governor had asked the Maharashtra government to formulate schemes for provisioning eggs and hot cooked meals to these groups of persons. The government had accordingly initiated the APJ Abdul Kalam Amrut Ahar Yojana – Streams 1 and 2, respectively, for pregnant and lactating women; and for children in the age group of 7 months to 6 years. According to the notification, the word 'meal' shall be replaced by 'Hot cooked meal, including eggs' in section 4 and clause (a) of the National Food Security Act, 2013. It further says that the State Government shall make adequate financial provisions to meet the additional expenditure to be incurred in scheduled areas while providing hot cooked meal to lactating and pregnant women. The notification adds a provision that eggs shall be provided to children aged above 7 months and up to 6 years, as an additional item in Anganwadis in the Scheduled Areas of Maharashtra, at least four times a week. It further mandates that suitable alternatives may be provided to children who may not prefer eggs.

Monitoring mechanism

Setting up of vigilance committees (section 29) at fair price shop level, block, district and state levels, and conducting social audits (section 28) are the key monitoring mechanisms prescribed in NFSA. While vigilance committees are being formed in many states for monitoring the functioning of targeted public distribution system, other departments have not made similar progress for their respective schemes. While the option of notifying the existing committees at the service delivery level, for instance school management committee (SMCs) under MDMS, and Village Health Nutrition and Sanitation Committee (VHNSC) under ICDS, can be explored there has been lack of information about any such development. Also, these committees for various schemes do not seem to converge at higher levels, not even at district and state levels. In some states relevant provisions regarding social audit have been included. However, mechanisms to strengthen these

provisions and empower the community, to enable them to conduct social audits in its true spirit is needed.

Grievance redressal mechanism

A robust grievance redressal mechanism lends enforceability to the provisions in the law. Section 14, 15 and 16 of NFSA require the state governments to set up grievance redressal mechanisms at various levels – Internal Grievance Redressal Mechanism (IGRM) – Sec 14, District Grievance Redressal Officer (DGRO) – Section 15, and the State Food Commission. In most of the states and for nearly all the schemes under NFSA, except the Maternity Benefit Scheme, each concerned department already had such mechanisms in place. NFSA suggest setting up toll free numbers, helplines, and designating nodal officers among others for the same. However, for effective implementation of the Act, it is also important to make sure that awareness is generated about these mechanisms that can be accessed by the people, and these mechanisms are made functional and



efficient by adhering to the procedures and timelines for settling the complaints. It has been noticed that most of the states have fallen short of exploring IGRM to its fullest potential.

As regards the District Grievance Redressal Officer, there has been a trend to designate the district commissioner for the same. It is despite the fact, that the Act does provide for appointing an independent DGRO as well, none of the state government have done so. This has raised serious concerns regarding the efficacy of the redressal of grievances at district level. DCs are normally part of most of the district level committees and are already burdened with too many things. Additional burden of looking after the complaints regarding TPDS and other schemes is likely to add to the delays in redressal of grievances.

Section 16 of NFSA requires setting up of State Food Commissions (SFCs) and the delays in establishing the same has been criticized by many quarters. Also, initially many states invoking section 18 of the Act designated other commissions such in the grievance redressal commissions, or commissions for the protection of child rights (CPCRs) as SFCs. However, these had to be reconstituted afresh after the objections raised by the central government and after such designation was challenged in courts on the grounds of non compliance with the composition as mentioned in the Act. It required an order of the supreme court of India to establish the State Food Commissions in atleast 10

states. In the case of *Swaraj Abhiyan Vs. Union of India*, the apex court had on March 22, summoned the chief secretaries of ten such states, for failing to implement the NFSA. It had said that with regard to the statute, the state governments have to appoint the food commission and cannot order a “go by to the statute enacted by the Parliament”. The court has also directed the state governments to ensure the representation of various groups – women, scheduled castes and scheduled tribes as mentioned in the Act.

While most of the states have constituted food commission now, judiciary’s intervention was required to make sure that the manner in which these commissions are appointed and the composition of the commission are in tune with the spirit of the parent law. Despite this political preferences cannot be ruled out in the process, and members may be appointed even if they do not have any expertise or experience in the area of food security and nutrition. It will also be required by the state governments to provide for adequate staff and administrative support to these commissions, and ensure that they have sufficient financial resources. It is also equally important that the DGROs as well as SFCs are capacitated to hear the complaints pertaining to all the schemes including the Mid Day meal Scheme (MDMS), Integrated Child development Scheme (ICDS), and Maternity Benefit Scheme (MBS), along with the Targeted Public distribution System (TPDS). NFSA had converted some of the benefits available through schemes such as TPDS, MDMS and ICDS as legal entitlements. While the Act does not provide for any new benefits, it is important to make sure that the implementation of the provision is facilitated in a manner that the issues pertaining to food and nutritional insecurities are addressed effectively. The impact of NFSA is yet to be seen in most of the states. However, it will also depend on how the state rules are framed, whether adequate resources have been allocated, level of awareness among people regarding entitlements and grievance redressal, and the investment done by states in building the capacity of functionaries.

Updates in Child Protection

Biological age to determine the jurisdiction of the POCSO Court³

The 38-year-old victim, suffering from cerebral palsy, was allegedly raped by the respondent no.2 in the appeal. The mother of the victim had approached court, stating that due to the condition, her daughter's mental age was only 6-8 years, and therefore, the case should be tried by a Special Court established under the POCSO. The division bench, in a 165-page judgement, applied the rule of literal construction, and held that since the role of the court was merely to interpret statutes, and not legislate, it could not interpret a statute beyond its ordinary and literal meaning unless that led to absurdity. Therefore, it was held that 'age' under POCSO would mean only biological age, and not mental age.

Supreme Court denies permission to a 10-year-old victim of rape to abort her foetus⁴

In July, 2017, the Supreme Court of India denied permission to a 10-year-old, who was pregnant as a result of repeated penetrative sexual assault by her uncle, to have an abortion. The Medical Termination of Pregnancy Act, 1971 forbids abortion of a foetus beyond 20 weeks, unless it can be shown that carrying the pregnancy to term would severely impact the health of the mother, or that the child would be born with genetic abnormalities. A division bench consisting of Chief Justice J.S. Khehar and Justice D.Y. Chandrachud had referred the matter to a medical board, which opined that an abortion would be likely to result in intense physical trauma to the victim. Based on this report, the Supreme Court ordered that the child would have to carry her pregnancy to term.

³ Ms. Eera through Dr. Manjula Krippendorf v. State (Govt of NCT of Delhi) & Anr. (2017), available at <http://supremecourtindia.nic.in/pdf/jud/ar1217-12192017.pdf>.

⁴ <http://timesofindia.indiatimes.com/india/supreme-court-agrees-to-examine-abortion-plea-of-10-year-old-rape-survivor/articleshow/59741747.cms>

The injustice caused by the myopic outlook of the MTP Act notwithstanding, the incident raises several broader questions which need immediate attention. Why did no one responsible for the child (her parents, authorities at school) notice that she was being subjected to sexual assault for a prolonged period of time? Why was her pregnancy not detected earlier, in which case, there would have been no need to approach the Court? These questions draw attention to the urgent and evident need to create better awareness of child sexual abuse, and focus on prevention and protection outside the Court and criminal justice system.

Standing committees' recommendations on Transgender Persons (Protection of Rights) Bill⁵

In 2016, the Ministry of Social Justice and Empowerment introduced the Transgender Persons (Protection of Rights) Bill, with an objective to provide for protection of rights of transgender persons and their welfare. In July 2017, the Department-related Parliamentary Standing Committee on Social Justice and Empowerment submitted its report on the Transgender Person (Protection of Rights) Bill, 2016. Some of the key observations/ recommendations specific to children are as follow:

- The Bill should use the term 'transgender and gender nonconforming students' instead of 'transgender student' as children, though gender non-confirming often may not be able to identify as 'transgender persons'. (Para 1.6)
- The definition of "Inclusive Education" should acknowledge concerns about bullying and harassment faced by gender non-confirming

⁵ <http://www.prsindia.org/uploads/media/Transgender/SCR%20Transgender%20Persons%20Bill%202016.pdf>

students and should be reframed as “a system of education wherein transgender and gender nonconforming students along with other students learn together without the fear of bullying, singling out and other forms of harassment, and the system of teaching and learning is suitably adapted to meet the learning needs of such students”. (Para 1.8)

- Recognising that family can be a site of violence and discrimination against transgendered children, the Committee emphasized the need to recognize alternate support structures in the transgender community. It recommended that the term “family” be defined so that “the Hijra or Aravani community elders, who adopt young transgender children are not put under risk and the Hijra family system is not criminalized.” (Para 5.16)
- In case where the parent or immediate family is unable to take care of a transgendered child or if the child does not want to live with them, the competent court should make every effort to place the child with the extended family or in the community in a family setting or a rehabilitation centre. (Para 5.11, 5.17)
- The committee recommends that directions should be given to the State Governments to set up specific rehabilitation (housing) centres meant only for transgender persons, which would cater to their specific needs. (Para 5.18)
- A specific clause should be added to the Bill to prohibit discrimination against a person because of the transgendered status, by an education authority during admission. Further denial of access to benefits provided by the educational authority or expelling the student or subjecting the student to any other detriment on transgender grounds should be unlawful. (Para 6.6)
- To address dropouts and discontinuation of education among transgender children, the Committee recommended that a provision be imposed on private educational institutions in line with the provisions of the Right to Education Act, 2009. The government should also be obligated

to formulate educational and communication programmes which are “age-appropriate, gender-sensitive, non-stigmatising and non-discriminatory. (Para 6.5)

State Rules under the Juvenile Justice Act, 2015

Two States in Eastern India, Jharkhand and Bihar are the foremost States to enact the State Juvenile Justice (Care and Protection of Children) Rules 2017 on the 13th June and 14th June, 2017 respectively^{6,7}. Although most of these rules are the same as the Model Juvenile Justice Rules, 2016 of Central government, a few additional features are also included in these State rules.

Revised visa format seeking information on foreign applicants’ criminal past⁸

The government is working on a revised visa format seeking information on foreign applicants’ criminal past, to bring the format in line with the visa manual which states that persons convicted of criminal offences cannot enter India. The form will also seek information on any cases involving child sexual abuse that the applicant was part of. Such measures taken by the government will curb the practice of child sex tourism mushrooming in India.

Re: Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India

On 5 August 2017, the Supreme Court held that that the definition of child in need of care and protection under the JJ Act, 2015 was illustrative and not exhaustive. It would extend to all children requiring State care and protection. The Supreme Court also passed directions related to registration of Child Care Institutions, constitution of Inspection Committees, importance of social audits, and training of personnel in the JJ System. The judgment can be accessed at: <http://www.advocatehoj.com/library/judgments/announcement.php?WID=8864>

⁶ Social Welfare, Women and Child Development Department, Notification 1790, Gazette No. 394, date 13/06/2017. Retrieved from <http://jhr2.nic.in/egazette/Notification.aspx>

⁷ <http://socialwelfare.bih.nic.in/Acts/Bihar-Juvenile-Justice-Rules-2017.pdf>

⁸ See <http://economictimes.indiatimes.com/nri/new-visa-format-to-seek-foreigners-criminal-past/articleshow/59768033.cms>.

Standard Operating Procedures for cases of Missing Children

The Hon'ble Supreme Court of India in *Bachpan Bachao Andolan vs. Union of India* (WP (Civil) 75 of 2012) on 10th May 2013 had directed formulation of a Standard Operating Procedure for cases of Missing Children. Accordingly, the Ministry of Women and Child Development and Childline has drafted an SOP, which envisages to assist Police, Child Welfare Committee and Juvenile Justice Board in dealing with the cases of missing and found or recovered children. The SOP can be accessed at: <http://wcd.nic.in/sites/default/files/SOP%20for%20Tracing%20Missing%20Children-24.4.17.pdf>

Standard Operating Procedures for care and protection of children in street situations



The National Commission for Protection of Child Rights in collaboration with Save the Children India drafted the 'Standard Operating Procedures for Care, Protection and Rehabilitation of Children in Street Situations in India', in 2017. The SOP intends to streamline the processes and interventions regarding street children, based on the prevailing legal and policy framework, and provide a common framework for minimum standards of care and protection. The SOP can be accessed at: <http://ncpcr.gov.in/showfile.php?lang=1&level=0&linkid=102&lid=1306>

India ratifies core ILO Conventions No. 138 and 182 on Child Labour⁹

In a more recent development, the Government of India ratified Conventions 138 and 182 (Minimum age Convention and Worst Forms of Child Labour convention respectively) on 13th June 2017, in a sideline event of the International Labour Conference, 2017 held in Geneva. This move comes in furtherance to the Child Labour (Prohibition and

⁹ <http://pib.nic.in/newsite/PrintRelease.aspx?relid=165604>; http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102691

Regulation) Amendment Act of 2016. With this piece of legislation, the Country has moved towards bringing in a complete ban over child labour and prescribed regulatory mechanisms for adolescent labour. The Act for the first time defined adolescents and differentiated them from children less than 14 years of age. This act attempts to conform to the Right of Children to Free and Compulsory Education Act, 2009, to ensure there is no conflict with a child's right to education within law. With the change in the legal scenario within the nation, the country moves closer to conforming to the standards prescribed in these international conventions through ratification. These conventions will enter into force for India on 13th June 2018.

Karnataka State Child and Adolescent Labour Policy and Action Plan

The Hon'ble Chief Minister of the State of Karnataka while placing the State budget on the floor of the assembly made a commitment, that the State would be declared free from Child and Adolescent labour in the next five years. In furtherance to this, the Department of Labour, Government of Karnataka requested CCL NLSIU to draft the Karnataka State Policy and Action Plan on Prevention of Child and Adolescent Labour. This was also acknowledged by the labour minister on the occasion of World day against child labour programme in Vidhana Soudha on June 12th 2017. A two day consultation was organized by CCL NLSIU to discuss the issues and the content of the policy. Eminent experts in the field of child labour from the State of Karnataka were present during the Consultation and gave their valuable insights. After a month long process, the Policy and Action Plan was submitted to the Labour Commissioner, GoK.



Updates in Right to Education



2017 Amendment to Karnataka Education Act, 1983¹⁰

The Karnataka Education Act, 1983 was recently amended in 2017, to strengthen the safety and security norms followed by the educational institutions in the State of Karnataka. The amendments, Sections 5A and 112A, mandates every educational institution and its employees to ensure safety and security of students, and penalizes the contravention of the safety norms, and other related and incidental provisions in the Act. These provisions forbids concealment of sexual offences within these institutions. A penalty provision for the violation of fees regulation in educational institutions (as per Section 48) has also been inserted through Section 124A. In addition, the exemption to ICSE and CBSE institutions from the applicability of the Act does not apply to the above mentioned provisions relating to safety and security and fees regulations.

CAG report on implementation of Right of Children to Free and Compulsory Education Act, 2009¹¹

¹⁰ Karnataka Act No. 25 of 2017: Karnataka Education (Second Amendment) Act, 2017 – Received the assent of Hon'ble Governor of State of Karnataka on 18th April 2017 and First Published in the Karnataka Gazette Extra-ordinary on 22nd April, 2017. Came into from 18.04.2017. [http://dpal.kar.nic.in/ao2017/25%20of%202017%20\(E\).pdf](http://dpal.kar.nic.in/ao2017/25%20of%202017%20(E).pdf)

¹¹ Report available at http://www.cag.gov.in/sites/default/files/audit_report_files/Report_No.23_of_2017_%E2%80%93_Combined_audit_Union_Government_Implementation_of_Right_of_Children_to_Free_and_Compulsory_Education_Act%2C_2009.pdf last accessed on 14th August 2017.

The Comptroller and Auditor General of India tabled its report on a compliance audit of the Union Government to the Right to Education (RTE) Act, on 21st July 2017 in the Parliament. The report states that there are discrepancies in financial management and there is a mismatch in the unspent balances at the end of the year and opening balances of the succeeding years, along with fiscal indiscipline. There was a shortage in the release of funds as the financial procedures were not strictly adhered to. The compliance to RTE Act was also at a low rate with no maintenance of records of children, inaccurate or incomplete U-DISE data, excessive or irregular reimbursement of per child expenditure, adverse pupil teacher ratio, deployment of teachers for non-educational purposes, and non-formation of SMCs among others. The report has highlighted the multiple issues plaguing the education system, which is leading to the depletion of the quality of education in government schools, and susceptible to more and more private players every day.

Privatisation to absolve Government¹²

The Chief of the NITI Aayog, Mr. Amitabh Kant, made an open statement in the Public Private Partnership (PPP) summit organized by FICCI, that the “Government is not good in operating and maintaining the big projects it initiates”, thus schools, colleges and jails needs to be handed over to private sectors. Education is a social good, and the state has the primary responsibility to provide equitable quality education to all children through the public funded national education system. The models followed by Nordic countries particularly Finland, and our neighbour Sri Lanka needs to be examined, to understand the role of Government in improving the quality of education tremendously in schools and colleges, rather than being exhilarated by private models of Canada and Australia.

¹² The article was last accessed on 2nd August 2017 and is available at http://m.timesofindia.com/india/hand-over-schools-colleges-jails-to-private-sector-amitabh-kant/articleshow/59782227.cms?utm_source=toimobile&utm_medium=Whatsapp&utm_campaign=referral

Updates in Right to Food



PUCL Vs. Union of India & Others¹³

In what is considered to be a final closure to the long drawn struggle for Right to Food in India, the Supreme Court issued an order dated 10th February 2017 dismissing all the applications and associated procedures of the case. The order specifically states that in view of the passage of the National Food Security Act, 2013, nothing further survives in the petition and is accordingly disposed of. In view of the disposal of the writ petition, all pending applications including applications for impleadment/intervention are disposed of. Should the petitioner face any grievances with respect to implementation of the provisions of the Act, the order states that a fresh petition may be filed.

Swaraj Abhiyan Vs. Union of India & Others¹⁴

In response to a plea filed by an NGO, Swaraj Abhiyan, seeking relief measures for farmers in drought affected states, the Supreme Court pulled up twelve states, for ineffective implementation of the provisions of the National Food Security Act, 2013. The petition alleged

that parts of twelve states, including Uttar Pradesh, Karnataka, Madhya Pradesh, Andhra Pradesh, Telangana, Maharashtra, Gujarat, Odisha, Jharkhand, Bihar, Haryana and Chhattisgarh were hit by drought and the authorities were not providing adequate relief. The apex court observed that almost four years have gone by since the Act was enacted, but the authorities and bodies mandated to be set up under it have not yet been made functional in some states, and this reflects the “pathetic” compliance of the provisions. Further, the apex court also noted that state food commission has not been established and appointments have not been made in some states such as Madhya Pradesh, Andhra Pradesh and Haryana. The Court particularly highlighted the fact that “non-compliance of the provisions reduces the importance of a basic right to wholesome and nutritious food, particularly for women and children, which are the objective of the Act.” Apart from a set of directions issued to the Ministry of Consumer Affairs, Food and Public Distribution, the Court directed the secretary of the Ministry to ask the states and union territories to constitute, establish and make fully functional a state food commission and vigilance committee before year end and the states have to ensure that adequate arrangements are made for the meaningful functioning of the commission.

¹³ Final order dated 10th February 2017 available at <https://drive.google.com/file/d/0ByKfbbvAFaw8NTZiUF9CdWF5S00/view>

¹⁴ Order dated 21st July 2017 available at http://supremecourt.gov.in/supremecourt/2015/41648/41648_2015_Judgement_21-Jul-2017.pdf



PGDCRL

POST GRADUATE DIPLOMA IN CHILD RIGHTS LAW



National Law School of India University [NLSIU]

NLSIU invites applications for the one year Post Graduate Diploma in Child Rights Law (PGDCRL) - Distance Mode. The course is one of its kind in India recognised by the University Grants Commission (UGC) and draws from the rich insights gained by the Centre for Child and the Law (CCL), a specialized Research Centre of the NLSIU, engaged in multi-disciplinary research, training, teaching, field level intervention, networking and advocacy on various issues related to children and law since 1996. For more information – see www.nls.ac.in/ccl

The PGDCRL course will benefit a graduate/post-graduate from any background who wishes to work on issues concerning children at various levels. This includes direct work with children, intervention in legal settings, work in donor organizations supporting work on child rights, advocacy and any other work related to promoting, protecting and monitoring the rights of children. The course has so far attracted lawyers, doctors, members of various judicial and quasi-judicial bodies, members of Commissions for Protection of Child Rights, academics, practitioners working with children, teachers, doctors, representatives of donor agencies, and others from diverse walks of life.

Eligibility for Admission: Distance Education Programmes are designed to empower interested candidates in expanding and deepening their knowledge in a globalized world. Being a post-graduate diploma programme, any graduate in any discipline is eligible to apply for it. The programme does not have any age barrier.

Duration: One Academic year. (Maximum duration to complete the course is three years).

COURSE PAPERS

- Paper I : Introduction to Law and Legal Systems
- Paper II : Child Rights, Policy and Law: International and National Framework
- Paper III : Key Legislations relating to children in India
- Paper IV : Working with children from a Rights Based perspective
- Paper V : Dissertation

RESOURCE MATERIALS: Candidates are provided with two sets of resource materials:

Self-Instructional Material: these are modules prepared as per the syllabus.

Reading Material: these are compilations of academic resources arranged according to the modules and papers.

REQUIREMENTS FOR SUCCESSFUL COMPLETION OF THE COURSE

- ✓ Every candidate has to appear for examination in the first four papers. All papers carry equal marks.
- ✓ Candidates are required to secure at least 50% marks in each paper.
- ✓ Every candidate has to submit a Dissertation (considered as Paper V)
- ✓ Candidates are permitted to continue the course beyond the first academic year, for an additional two years.

Note: The Post Graduate Diploma is a one year course. Every candidate admitted to the course has to pay the prescribed fees at the time of admission. If a candidate is required to continue the course beyond one academic year because of his/her non-fulfilment of the prescribed requirements for the award of the degree, he/she will be permitted to continue for the subsequent two academic years on payment of a continuation fee as prescribed for each year. At the end of the third academic year, if the candidate fails to fulfill all the requirements for the award of the degree, the admission will automatically stand cancelled.

MODE OF TEACHING

The course is taught in English and through distance mode. Resource material is provided to the candidates on admission and contact classes are held as per the schedule given by the Distance Education Department (DED) NLSIU,

as notified on its website. NLSIU respects the time of candidates participating in the Contact Classes. Accordingly, best efforts are made to adhere to the notified schedules. Though the Contact Classes are not compulsory, it is advised that the candidates attend these and benefit from the teaching and class room discussions. Classes are held only at NLSIU, Bangalore.

EXAMINATION SCHEME

Candidates are expected to write an in-class examination for papers I-IV, which carry 100 marks each. A Grading system is followed for evaluation of performance. Minimum B grade (50% marks) is required to pass a paper. Diploma students are also expected to write a Dissertation on a suggested topic for Paper V, which carries 80 marks. Students are expected to take an oral exam viva-voce, which will be based on the Dissertation, and this viva-voce carries 20 marks. The deadline for submission of Dissertation is one month prior to the examination. A minimum Cumulative Grade Point Average (CGPA) of 3.00 is necessary to complete the course.

Examination Schedule: The DED conducts examinations twice a year (Annual examination is held in June and the supplementary examination in December/January). A candidate, who is desirous of writing the examination, must pay the exam fees of Rs.300 per paper, at least 20 days before the commencement of the exam. Those who want to write some papers only can pay fees at the above rate for those papers only. The University has started two more exam centers and hence candidates have the option to appear for their exams in New Delhi, Pune or Bangalore. Exams are conducted over a period of 5 days (total 4 theory papers and one viva-voce)

ADMISSION PROCEDURE

Candidates intending to enroll for admission are required to submit the duly filled in application form along with the attested copies of the Provisional/Degree certificates and the fee prescribed, before the last date of admission. Soon after completion of the admission process the confirmation of admission will be sent to the candidates. The advertisement for admission to the course will be made in all leading dailies in the month of April and on the DED website as well. Admissions are usually completed by June 30. However, at the discretion of the Vice Chancellor candidates may be admitted upto 31st August on payment of late fee of Rs.500/- Admission form and Handbook may be obtained upon payment of Rs.1500/- through demand draft (DD) favouring Registrar, NLSIU, payable at Bangalore. Filing of Application and payment can be made online from <<<http://ded.nls.ac.in>>>.

COURSE FEE

Application Fee	Rs. 1,500/-
Admission Fee	Rs. 2,500/-
Course Fee	Rs. 11,200/-p.a
Total Course Fee	Rs. 15,200/-
Total Course Fee (with late fee of Rs. 500)	Rs. 15,700/-

FOR FURTHER DETAILS PLEASE CONTACT:

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