

The Centre for Child and the Law, National Law School of India University, Bangalore submits the following information regarding India's implementation of recommendations it accepted through its 2012 Universal Periodic Review, relevant to rights of children.

### **Right to Education and Right of Children to Free and Compulsory Education Act, 2009**

1. Right to Education has been recognised as a fundamental right and the Right of Children to Free and Compulsory Education Act, 2009 was enacted to implement this right. Along with these, the National Policy for Education, 1986, Programme of Action, 1992, the National Charter for Children, 2004 etc., also provide for the right to education of children. The recent National Policy for Children, 2013 recognises and promotes the right to education of all children up to the age of 18 years. Various policies and schemes like DPEP, SSA, RMSA etc., have been further developed to effectively promote the right to education of children.
2. However, the complete implementation of these programmes has not yet been possible and consequently, not all children are receiving education as contemplated under the right. The lack of awareness of the Panchayat Raj Institutions<sup>1</sup>, collection of capitation fees and screening procedure<sup>2</sup>, dilution of RTE Act to 25% reservation<sup>3</sup>, non-constitution of State Advisory Councils in all States<sup>4</sup>, shortage of teachers<sup>5</sup>, non-compliance of neighbourhood school principle<sup>6</sup>, ineffective redressal mechanisms, increasing privatisation and closure of government schools<sup>7</sup> all clearly portray non-compliance of RTE Act, 2009 and fabrication of right to quality education of children.
3. Pre-primary education is recognised as the duty of the States<sup>8</sup> and not a right of the children.<sup>9</sup>
4. Provision for the special requirements<sup>10</sup> for CWSN in schools has been directed under various policies, schemes and circulars of the MWCD.<sup>11</sup> However, the schools continue to be unfriendly to CWSN and in many cases places of learning are inaccessible to these children. In certain cases discrimination against CWSN is also seen at the time of admission itself.
5. The Government of India has issued circulars under RTE Act, 2009 and various policies have also been formulated for ensuring inclusive education<sup>12</sup> and guaranteeing non-discriminatory education to girls<sup>13</sup>. Though efforts are in place to sensitise the public, lack of political will, social susceptibilities, lack of awareness among the public, especially in rural areas are immensely affecting inclusive education in general and the education of girls in particular.
6. Though efforts were made to spread awareness of human rights by providing some space in the textbooks, hardly efforts are made to teach it as a full fledged lesson in schools and colleges. Due to lack of proper and effective training to teachers, there continues to be lack of sufficient expertise on part of the teachers with regard to imparting knowledge on human rights to school children. A training module on Human Rights Education for Training Professionals imparting education in primary, secondary and higher secondary levels has been released by NHRC.
7. The MHRD, Government of India has issued an Advisory for Eliminating Corporal Punishment in Schools under the Right of Children to Free and Compulsory Education Act, 2009. Also, Guidelines for Eliminating Corporal Punishment in Schools has been formulated by NCPCR. Further, the Juvenile Justice (Care and Protection) Act, 2015 also prohibits awarding corporal punishment to children. However, no specific legislation has been enacted so far for prohibition of corporal punishment in schools.
8. Consultations with the relevant stakeholders for formulation of policies are not being conducted in the right spirit.<sup>14</sup>

9. The resource allocation for the education sector is very minimal and highly insufficient. Much to the contrary of the recommended 6% of GDP, allocation for school education currently stands at 3.8%.

### **Child and Adolescent Labour (Prohibition and Regulation) Act, 1986**

10. The CLPR Act, 1986 has been amended to “*The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986*”. Under the amended Act, definition of children based on their age has been divided into child and adolescents much contrary to the UNCRC definition of child.<sup>15</sup>

11. The amended Act not only allows working of children after school hours<sup>16</sup> but also has reduced the list of occupations and processes in which children cannot engage,<sup>17</sup> which can be further amended by the Central Government at its discretion.<sup>18</sup> Also, the measures for rehabilitation of child labourers are not child-friendly and are ineffective in nature.<sup>19</sup>

12. The child labour legislation in India only pertains to prohibition and regulation while complete abolition of child labour is neither the mandate of the law nor is it being designed to be practically implemented through schemes. The amended Act not only reverses the gains of the previous legislation but also contradicts the international obligations<sup>20</sup> of India with respect to child labour.

### **Juvenile Justice (Care and Protection of Children) Act, 2015**

13. The push to establish the authorities and institutions under the Juvenile Justice (Care and Protection of Children) Act has come from the Supreme Court.<sup>21</sup>

14. India has regressed by incorporating the transfer system which allows the transfer of some children aged between 16 and 18 years alleged to have committed a heinous offence to an adult court for trial.

15. Provisions of the JJ Act 2015 contravene the Committee on the Rights of the Child’s (CRC) view that all persons below the age of 18 years must be treated in accordance with the rules on juvenile justice, and that States which treat 16 and 17 years olds as adult criminals should “change their laws with a view to achieving a non-discriminatory full application of their juvenile justice rules to all persons under the age of 18 years.”<sup>22</sup> India has ignored the express concern by the CRC in its Concluding Observations in 2014 about the proposed lowering of the minimum age of criminal responsibility stated in the Juvenile Justice Rules of 2007.<sup>23</sup>

16. The objective of the transfer related provisions in the JJ Act 2015 is deterrence<sup>24</sup> – a goal that does not befit the best interest principle enshrined in the UNCRC as per which the reintegration objective should always override retribution considerations.<sup>25</sup>

17. Resolutions of the UN General Assembly and the Human Rights Council exhorting States to repeal life imprisonment with the possibility of release for offences committed by persons under 18 years of age<sup>26</sup> has been disregarded, as Section 21 prohibits life imprisonment without the possibility of parole and thus allows the imposition of life imprisonment with parole.

18. Though the Pre-Legislative Consultation Policy prepared by the Ministry of Law and Justice<sup>27</sup> requires Ministries to publish draft legislations in the public domain for at least 30 days, the Ministry of Women and Child Development prescribed only 15 days’ time for public responses to the Juvenile Justice (Care and Protection of Children) Bill, 2014. No attempt was made by the MWCD to consult with children, particularly those in conflict with the law, who were likely to be affected by the Bill.<sup>28</sup>

## **Commissions for Protection of Child Rights Act, 2005**

19. While State Commissions for Protection of Child Rights (SCPCR) have been constituted on paper in all States except Jammu and Kashmir, their functioning is marred by political appointments, vacancies, ad hoc appointment procedures, poor infrastructure, and measly salaries.

20. Of the 36 SCPCRs constituted, only nine States have duly appointed a Chairperson and all six members; six have appointed Secretaries of Government as the Chairperson and/or Members of the SCPCR (thus heavily compromising its independence); and 14 SCPCRs are functioning without any Rules. (Annexure A details the status of establishment of SCPCRs)

21. Selections to the National and State CPCRs have been challenged before several courts.<sup>29</sup> In 2010, the Delhi High Court had directed the Ministry of Women and Child Development to place the details of the members of the Selection Committee and the candidates for the National PCR on its website for at least 30 days prior to the notification.<sup>30</sup> This process was not followed during the appointment of the Chairperson in May 2013 and in September 2015 and the appointment of Members in November 2015.

22. In November 2013, the Delhi High Court quashed the appointment of a Member of the NCPCR and expressed concern that the selection process was not based on any objective guidelines. It urged the government to prescribe guidelines for eligibility.<sup>31</sup> In February 2015, the Supreme Court while hearing the appeal against this order, expressed concern over the lack of norms and guidelines and transparent selections.<sup>32</sup> While the government amended rules in March and May 2014<sup>33</sup>, the appointment process remains in its control and the concerns related to independence of the NCPCR and SCPCR still stand.

23. The guidelines laid down by the higher judiciary have been overlooked by most States. The selection process lacks transparency. Details of the composition of the Selection Committee and the persons it selected are not displayed on any website in most States.

## **Implementation of the Protection of Children from Sexual Offences Act, 2012**

24. The Protection of Children from Sexual Offences Act was enacted on 19 June 2012 and came into force on 14 November 2012. The implementation of the Act has been tardy in respect of structural measures and support services. Under the POCSO Act, Special Public Prosecutors should be appointed for every Special Court for conducting only cases under the Act.<sup>34</sup> However, this is not the case in most States. Prosecutors have been saddled with cases under the POCSO Act in addition to their existing caseload and are therefore overburdened with little time for meaningful interactions with child victims.

25. There are only three exclusive courtrooms in India with a separate entrance for children, a waiting room, and deposition rooms.<sup>35</sup> The absence of such structures in the rest of the country results in child victims being exposed to police officers, accused persons in handcuffs, and even the alleged perpetrator, which creates an intimidating court atmosphere for children and their families. Most court complexes are not disabled-friendly.

26. There is a huge support gap in the services rendered to child victims and their families. Though the POCSO Rules 2012 provide for the appointment of Support Persons, this is an exception. Support services are being provided by a handful of non-governmental organisations in very few metropolitan cities. However, in most cases, support is not available to the child throughout the legal process. Witness protection and support is crucial as a study conducted by CCL NLSIU based on 667 judgments by Special Courts in Delhi revealed that in 67.5% cases, the child retracted her statement about the sexual abuse in court.<sup>36</sup>

27. Although Section 33(8) of the POCSO Act along with Rule 7, POCSO Rules empowers Special Courts to order interim compensation, it is rarely ordered.<sup>37</sup> The purpose of interim relief is defeated by making it conditional on support of the prosecution's case and by the reluctance of Special Courts in ordering compensation.

### **Implementation of Right to Food and National Food Security Act 2013 (NFSA)**

28. The NFSA includes only few components of the already existing food based welfare schemes such as ICDS and TPDS and MDMS, and dilutes the benefits already available to people through these schemes.<sup>38</sup>

29. The NFSA exhibits a lopsided approach towards TPDS.

30. The NFSA does not consider production and agriculture related issues and deals with only distribution related issues.<sup>39</sup>

31. Despite repeated extension of deadline mentioned in the Act, certain states are yet to fully implement the Act.<sup>40</sup> While many States claim to have implemented the Act, it is found that they have not framed the Rules under the Act.<sup>41</sup>

32. Most of the States have not framed comprehensive set of Rules under the Act.<sup>42</sup> Certain provisions in the Rules mere reproductions of the provisions mentioned under the Act.<sup>43</sup>

33. There is a tendency among state governments to maintain status quo without revisiting existing practices in light of their relevance and utility.<sup>44</sup>

34. Certain states are just matching up with requirements of the Act while diluting the scope and quantum of entitlements.<sup>45</sup>

35. There is no coordination or convergence among relevant departments implementing all food based welfare programmes mentioned under the Act in framing of Rules.<sup>46</sup>

36. Implementation of the Act in most of the States has amounted to only the identification of beneficiaries under TPDS. State Food departments are using the opportunity to revise the list of beneficiaries to weed out bogus cards instead of expanding the number of beneficiaries.<sup>47</sup>

37. Robust grievance redressal mechanisms<sup>48</sup> and monitoring systems<sup>49</sup> are yet to be set up for effectively implementing the Act. Coordination between all the grievance redressal mechanisms mentioned under the Act is to be ensured.'

38. Many states have designated those institutions as State Food Commissions that are reeling under functional issues.<sup>50</sup>

30. None of the State rules have provided for conducting of social audits.<sup>51</sup>

40. In addition to Section 40 of the Act, State governments are also supposed to frame rules or guidelines on certain other aspects too, for better implementation of the Act.<sup>52</sup> However rules do not cover any of those aspects.

### **Recommendations - India should:**

41. Include human rights education as a part of the curriculum both for teaching professional courses as well as school curriculum and provide effective training to teachers to equip them with expertise required for providing human rights education. It would be feasible to make human rights education a mandatory aspect of teacher training programmes and professional courses for teaching before strictly emphasizing it in the school curriculum. Training of trainers is the need of the hour.

42. Effectively implement the RTE Act, 2009 and work towards making the education system of the country an inclusive one.

43. Extend the scope of RTE Act, 2009 both upwards and downwards to include pre-primary as well as secondary educations within its ambit and thereby guarantee free and compulsory education to all children up to the age of 18 years.

44. Address the issues of shortage of teachers and single teacher schools by appointing required number of qualified and trained teachers and filling up vacancies in a timely manner.
45. Arrest privatisation of education by regulating mushrooming of private institutions, sojourning closure of government schools and strengthening of Public Education System.
46. Increase the budget allocation for educational sector to reach at least 6% GDP as recommended by the Education Commission.
47. Review all laws and legislations relating to child labour in the background of the fundamental right to education of children and repeal the amendments made to the CLPR Act to allow children to family occupations and business.
48. Ratify Article 32 of UNCRC and the ILO Conventions No. 138 and No. 182 for complete abolition of child labour.
49. Build co-ordination among different government functionaries working for children and ensure convergence in their functioning.
50. Repeal the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 that allow the trial as adults of children between 16 and 18 years accused of heinous offences and uphold its obligations under the UNCRC.
51. Demonstrate accountability to children (those at risk as well as those who have entered into or have been discharged from the juvenile justice system), by effectively implementing the law and adhering to the minimum standards enshrined in the UNCRC and other legally binding international instruments.
52. Effectively implement the Protection of Children from Sexual Offences Act, 2012, and in particular by allocating funds for the construction of waiting rooms for children in all court complexes, especially for child victims of sexual offences and for making the access to the courtroom disabled-friendly.
53. Develop an action plan for support services and witness protection to child victims of sexual offences through the entire duration of the legal process.
54. Effectively implement the Commissions for Protection of Child Rights Act, 2005 and ensure independence of the Commissions, fill vacancies in a timely manner, and ensure that appointment processes are uniform, transparent and not political.
55. Comply with General Comment 15 (pertaining to Right to Water) of the Committee on Economic Social and Cultural Rights.
56. Ensure adherence to the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, Voluntary Guidelines on responsible Governance of tenure of Land, Fisheries and Forests in the Context of National Food Security
57. Ensure effective implementation of Article 24 (health and health services) and Article 27 (adequate standard of living) of UNCRC
58. Consider taking legislative measures in order to comply with the general Comment 12 of Committee on Economic, Social and Cultural Rights
59. Consider implementation of the National Nutrition Policy (1993) in totality.
60. Review the NFSA in light of such comprehensive understanding regarding food security and nutrition and ensure inclusion of all components of food security – availability, access and adequacy – quality, quantity, cultural acceptability and nutritional content – in the entitlements under national law.
61. Implement all the interim orders of the Supreme Court of India in *PUCL Vs Union of India* case and uphold them as legal entitlements.

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- 1 The Constitution visualizes Panchayats as institutions of self-governance. Under the Right of Children to Free and Compulsory Education Act, 2009 ensuring the right to quality education of children, the responsibility of the implementation of the Act is given to the local authorities at the fundamental level. The local authorities in the Indian setup include the Gram Panchayats, Taluk Panchayats and Zilla Panchayats (i.e., PRIs).
  - 2 Section 13 of the RTE Act, 2009 mandates that no capitation fee can be collected and there shall be no screening procedure while enrolling children to schools.
  - 3 Section 12(1)(c) of the RTE Act, 2009 provides for 25% reservation in private schools for children disadvantaged groups and weaker sections. The entire legislation is being diluted to this particular provision and the holistic significance of the legislation is being entirely overlooked thereby compromising the effectiveness of the legislation. The RTE Act, 2009 is not being implemented in its right spirit.
  - 4 Section 34 of RTE Act, 2009 provides for the constitution of State Advisory Councils in all States to advise the State Government on implementation of the provisions of the Act in an effective manner.
  - 5 According to the District Information System for Education (DISE) of the MHRD, Government of India, the academic year 2014-15 saw 41.55% of the 7.6 lakh primary only schools in the country staffed by only two teachers. 11.62% had only one teacher and 0.84% (6,404) did not have any teacher at all. And of the total 12.6 lakh schools in India, including those with primary, senior secondary and higher secondary sections, 28.68% have only two teachers, 8.84% have only one and 0.91% (11,249) have no teacher at all. As of March 2015, 5 lakh teacher posts were vacant.
  - 6 The neighbourhood school principle, that forms a major component of the right of children to free and compulsory education is followed only in the case of 25% reservation under the RTE Act, 2009 while in normal cases, the neighbourhood school principle is hardly followed. Children travel as far as 14 to 15 kilometres to schools especially where children are studying in private schools.
  - 7 Nearly 1 lakh government schools have been shut down since the enactment of the RTE Act, 2009 (<http://www.governancenow.com/news/regular-story/rte-5-years-1-lakh-schools-shut-down-india-national-forum->)
  - 8 Article 45 of Constitution of India and Section 11 of the RTE Act, 2009
  - 9 Education from 3 to 6 years of age is not recognised as a fundamental right. Not much effort is made in this direction except for the clarification that the 25% reservation contemplated under the RTE Act, 2009 is to be provided from pre-primary cases in schools that conduct such classes. However, confusion continues to prevail in this matter as well and courts are being approached for intervention and clarification.
  - 10 Learning aids such as braille, hearing aids, wheelchair etc.
  - 11 Inclusive Education for the Disabled at Secondary Stage (IEDSS), Article 21A of Constitution of India, National Policy for Children, 2013, National Education Policy, 1986 and Programme of Action, 1992, Right of Children to Free and Compulsory Education Act, 2009 etc., all provide for removing any barriers in access to and attainment of quality education by all children. This recognises and ensures equal opportunities to children with special needs in obtaining quality education.
  - 12 Article 21A of Constitution of India, National Policy for Children, 2013, National Education Policy, 1986 and Programme of Action, 1992, Right of Children to Free and Compulsory Education Act, 2009 etc., all provide for removing any barriers in access to and attainment of quality education by all children.

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13 National Programme for Education of Girls at Elementary Level (NPEGEL), National Scheme of Incentives to Girls for Secondary Education, Girls Hostel Scheme, Beti Bachao Beti Padhao etc.

14 Consultations were conducted by the Government of India for drafting the New National Education Policy, 2015. (Formulation of the policy is still under process). However, the consultation process was an initiative to ‘manufacture consent’ for a policy in favour of Privatization, Commercialization, commodification and corporatization of education through Public Private Partnership by providing fixed themes and superficial questions to elicit answers from the innocent community in favour of Public Private Partnership, appointment of contract teachers and shifting the core contents of education to produce glorified clerks and BPOs to serve the corporate sector instead of creating a strong foundation for a society based on egalitarian values.

15 While UNCRC defines child as any person below the age of 18 years, the proposed amendment to CLPR Act, proposes to define all persons below the age of 14 years as child and those within the age group of 15 to 18 years as adolescents.

16 Section 3 Clause (5) of the amended CLPR Act allows child labour in “family or family enterprises” or allows the child to be “an artist in an audio-visual entertainment industry”.

17 The amended CLPR Act has slashed the list of hazardous occupations for children from 83 to include just mining, explosives, and occupations mentioned in the Factories Act.

18 Section 4 of the Act empowers the Government authorities to remove the hazardous occupations from the present list and Parliamentary intervention is not necessary for the same.

19 The child care institutions to which the rescued children are sent to lack even the basic amenities and children are made to stay in unhygienic and inhumane conditions. The efforts of their reintegration into the society and their families are not very effective thereby forcing them to run away and resort back to child labour under much worse conditions.

20 UNSDG Goal 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all; ILO Conventions; UNCRC

21 *Sampurna Behrua v. Union of India*, W.P.(Civil) No.473 of 2005. In a case that is ongoing since 2005, it directed all State Governments to establish authorities under the JJ Act, fill vacancies, train officials, and develop curriculums. The Supreme Court’s intervention has highlighted the non-existence of key institutions like SCPCRs, CWCs and JJB’s which are a prerequisite for the implementation of the JJ Act in several States .Notably, the court through its orders has signified the importance of Capacity Building of stakeholders, transparency and accountability of State Governments through submission of quarterly reports and trainings for legal aid lawyers and probation officers. The court also considered the matter of non-registration of NGO’s and directed each State Government to immediately deal with the matter as it could lead to trafficking of children. The State Governments were also directed to shift children from non-registered NGO’s to registered NGO’s until they were registered according to the law. The Supreme Court is also monitoring the implementation of the Integrated Child Protection Scheme through its orders and has directed the government to provide information on the utilization of funds disbursed to the State Governments (*In Re: Exploitation Of Children In Orphanages In The State Of Tamil Nadu V. Union Of India & Ors*, Writ Petition (Criminal) No.102/2007, order dated 20.03.2015) Effective implementation of the JJ Act has been identified as a matter of serious concern by the Indian Supreme Court. A one person Committee headed by Hon’ble Justice Mr. Madan B Lokur was set up in August 2013 to ensure the effective implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000. The Committee held a review meeting with the State level Juvenile Justice Committees of the Hon’ble High Courts on 22 February 2014.

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One of the suggestions that emerged from the meeting was to hold round table conferences of the High Court Committees with stakeholders involved in the implementation of the Act to promote learning from across the states and to develop strategies for effective implementation of the JJ Act across the country. As a follow up to the decision in the 22 February meeting, it was envisaged that a report on the status of implementation of the Act is developed, focusing on the experiences of States, the key bottlenecks and most importantly on concrete recommendations that could be made to help realize this goal. A series of five Regional Level Round Table Conferences were organized across the country in 2014 to look at effective functioning of Juvenile Justice Boards, Child Welfare Committees, Management of Child Care Homes, and Provision of Legal Services. A second round of five conferences was held in 2015 to take stock of the progress made from the previous round and to also focus on rehabilitation of children in conflict with the law and in need of care and protection.

<sup>22</sup> Committee on the Rights of the Child, General Comment No. 10, Children's rights in juvenile justice (Forty-fourth session, 2007), U.N. Doc. CRC/C/GC/10 (2007) paras 37-38.

<sup>23</sup> Concluding Observations of the Committee on the Rights of the Child, India, U.N. Doc. CRC/C/IND/CO/3-4 (2014) para 87-88.

<sup>24</sup> Lok Sabha Debates, Juvenile Justice (Care and Protection of Children) Bill, 2014, 07 May 2015, [96http://164.100.47.132/debate/text/16/TV/0705f.pdf](http://164.100.47.132/debate/text/16/TV/0705f.pdf). The following statement was made by Maneka Gandhi, Minister Women and Child Development in the Lower House of Parliament during the debate on the Juvenile Justice Bill – “Sir, what do we want from this Bill? I do not want to arrest children. I do not want to be mean to them. No mother would want that. No Member of this House would want [it]. But the point is that provisions for such children in this Bill we want it to act as a deterrent.”

<sup>25</sup> CRC, GC 10, para 10. The deterrence effect of the transfer system is also incompatible with India's domestic legal and policy framework. It offends the Preamble and Section 3 (4), JJ Act 2015 and Article 3(iv) of the National Policy for Children 2013.

<sup>26</sup> UNGA, Human rights in the administration of justice, A/C.3/67/L.34, 9 November 2012, para 18; Human Rights Council, Human rights in the administration of justice, including juvenile justice, A/HRC/24/L.28 (26 September 2013) para 22; Human Rights Council, Human rights in the administration of justice, including juvenile justice, A/HRC/30/L.16 (29 August 2015) para 24.

<sup>27</sup> <http://lawmin.nic.in/ld/plcp.pdf>

<sup>28</sup> This is a violation of Article 12, UNCRC as well as Article 3(xii) of the National Policy for Children 2013.

<sup>29</sup> On 11 February 2014 a Single Judge of the Gauhati High Court in *Runumi Gogoi v. State of Assam*, Writ Petition (C) No. 4555/2013 quashed the appointment of the Chairperson of the Assam State Commission for Protection of Child Rights (ASCPCR) on grounds that it was arbitrary and in gross violation of the selection procedure mandated under the Commissions for Protection of Child Rights Act, 2005 (CPCR Act). Justice Ujjal Bhuyan observed that the Selection Committee did not record its satisfaction about Ms. Borgohain's suitability, nor did it recommend her or anyone to the State government for appointment, and that “...it was a decision of the Chief Minister which was imposed on the Selection Committee.” It termed this lapse not only a “procedural defect” but “an infirmity” that “strikes at the very root of the decision-making process itself,” which the court has the power to review. It concluded that the breach of the mandatory procedure stipulated under the Act rendered the appointment untenable.

<sup>30</sup> *Association for Development v. Union of India*. 2010 (115) DRJ 277. In this case a writ petition challenging the appointments of two members of the NCPCR had been filed before the Delhi High Court. The High Court recommended a broad based Selection Committee

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which could include independent experts in the field, the Chairperson of the UPSC, and/or the Leader of the Opposition. The Solicitor General at the time had assured the Court that its recommendations would be borne in mind and that “at least one Member of the Selection Committee shall be an independent expert of eminence in the field of child rights or welfare.” Further, upon completion of the selection process and at least 30 days before the notification, the details of the members of the Selection Committee and the selection candidates would be put up on the website of the Ministry.

<sup>31</sup> *Association for Development v. Union of India*, W.P. (C) 1055/2011, decided by the Delhi High Court on 7.11.2013. On 7 November 2013, the Delhi High Court again considered a challenge to the appointment of two members of the NCPCR. Application filed under the Right to Information Act, 2005, confirmed that no advertisements had been issued by the Ministry to fill the posts in the Commission. The petitioners claimed that the Selection Committee “took no steps to verify the credentials” or cited reasons for preferring these members over other candidates. What was also on record in this case was that the source of recommendations for all candidates was political. Of the 130 applications, 35 had been recommended by Union Ministers, 18 were political party functionaries of which 17 were Congress leaders, 33 had been recommended by MPs and MLAs, 7 by Chief Ministers and State Cabinet Ministers, 10 by NCPCR, and 3 by the Prime Minister’s Office (para 27).

<sup>32</sup> *Yogesh Dube v. Association for Development*, Civil Appeal No. 10960 of 2013. In its order dated 25 February 2014<sup>32</sup>, the Supreme Court observed that the government had the requisite powers to frame guidelines for the selection process and that they saw “no reason why norms and guidelines for selection of candidates should not be framed and published so that the entire process of selection is fair, reasonable, objective and transparent.” The court was also critical of the suggestion that advertising vacancies was not necessary as the Ministry had been receiving application without publicizing it. It observed that “[r]eceiving applications from candidates recommended by people who have no role to play in the process of selection may in fact have the effect of rendering the selection process suspect for any such recommendations are most likely to influence the selection process in a subtle manner to the prejudice of other candidates who are not resourceful enough to secure such recommendations no matter they are otherwise equally if not more meritorious.” It cautioned the government against hurrying the selection process without framing rules and guidelines.

<sup>33</sup> The National Commission for Protection of Child Rights Rules, 2006, amended in 2014.

<sup>34</sup> The Protection of Children from Sexual Offences Act, 2012, Section 32(1).

<sup>35</sup> The courtrooms being referred to here are in Saket and Karkardooma in Delhi and Nampally in Telengana.

<sup>36</sup> Centre for Child and the Law, National Law School of India University, Bangalore’s *Report of Study on Special Courts in Delhi*, (January 2016) 54 <<https://www.nls.ac.in/ccl/jjdocuments/specialcourtPOSCOAct2012.pdf>>

<sup>37</sup> There is confusion in most States about whom to approach for compensation – the Special Courts or the State/District Legal Services Authority. Most State Victim Compensation Schemes (VCS) do not recognize offences under the POCSO Act and prescribe as an eligibility criterion the requirement that the victim should support the police and prosecution. This makes the payment of compensation conditional on testifying against the accused in court which invariably takes place months after the incident. Further, rape of a minor is specified in the Schemes, but due to the gendered definition of rape in the Indian Penal Code, it is unclear whether a boy below 18 years who has been a victim of a sexual offence can be awarded compensation under the VCS.

<sup>38</sup> Benefits that were available by the virtue of interim orders of Supreme Court of India in the PUCL Vs Union of India case have not been recognized as entitlements in the Act. Many

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states have been providing greater benefits to a larger beneficiary base. National Nutrition Policy (1993) has not been referred to. In effect the legal entitlements have been downwardly revised through the Act. 1. In many drought prone regions entitled food grains are not reaching affected people.

<sup>39</sup> Many of the key components of food security such as access to safe drinking water, health support to adolescent girls and other such benefits have been included as objectives to be progressively realized (schedule III of the Act). Sanitation and safe drinking water have been included in Schedule III as objectives to be progressively realized.

<sup>40</sup> According to the information provided on the website of Department of Food and Civil Supplies, GoI 32 States/UTs are currently implementing the NFSA. Andhra Pradesh, Assam, Bihar, Chandigarh, Chhattisgarh, Daman & Diu, Delhi, Goa, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Lakshadweep, Madhya Pradesh, Maharashtra, Odisha, Puducherry, Punjab, Rajasthan, Sikkim, Telangana, Tripura, Uttarakhand, West Bengal, Uttar Pradesh, Meghalaya, Jammu & Kashmir Andaman & Nicobar, Mizoram, Dadra & Nagar Haveli, Gujarat and Arunachal Pradesh are implementing the Act at present. Out of these Chandigarh and Puducherry are implementing the Act in Direct Benefit Transfer mode. The inadequacy of the cash transfers in dealing with the food insecurities and malnutrition has been established by many studies and the same was even withdrawn once in Puducherry. See, <http://dfpd.nic.in/nfsa-act.html>

<sup>42</sup> As per the information provided by the Department of Food and Civil Supplies, GoI only Mizoram, Manipur, Sikkim, Telangana and Bihar have framed rules on all the aspects mentioned under section 40 of the Act. 16 states/UTs have framed rules on State Food Commission- Andhra Pradesh, Andaman and Nicobar islands, Assam, Bihar, Chhattisgarh, Daman and Diu, Delhi, Goa, Gujarat, Jammu and Kashmir, Manipur, Odisha, Sikkim, Telangana, UP and Uttarakhand. The process of framing rules is partially done in another four states Jharkhand, Meghalaya and Madhya Pradesh- they are yet to be notified. Only few of these Rules are available on the website of the concerned departments.

<sup>43</sup> For instance, the Rules on State Food Commission and Transparency and Accountability mentioned in the Mizoram Food Security Rules, 2015 are exact verbatim reproduction of provisions in the Act (See Chapter XI and Sections 16-21 of National Food security Act, 2013).

<sup>44</sup> Guided by the convenience of notifying the existing executive orders as rules, most of the states are reluctant to introduce any changes, even though the systems need urgent overhauls.

<sup>45</sup> Many States have been providing greater quantity of commodities and cover larger number of beneficiaries than those provided under the Act. This threat of watering down of the benefits is looming large in most of states. Section 32 of the Act enables state governments and central government to continue with or formulate other food based welfare schemes. Motivation is also available in the form of best practices in various states, Schedule III of the Act, and various interim orders of the Supreme Court of India in Right to Food case. However finally it rests upon the political will of the states and centre. Some states are indeed continuing the already existing benefits or protecting the existing beneficiaries by clearly mentioning that these are state initiatives. However, these being merely schemes, they are easily susceptible to be withdrawn effortlessly at any time in the future.

<sup>46</sup> In most of the states, the Departments of Food and Civil Supplies have not been interacting with all departments involved in the implementation of MDM scheme, ICDS and provision of other benefits as part of the Act and therefore the Rules formulated are devoid of the provisions pertaining to these entitlements. The Rules being drafted by the department implementing TPDS have a lopsided approach towards TPDS. This severely impedes the

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holistic conception of food security that the Act attempts to envisage and also comprehensive implementation, monitoring, evaluation, grievances redressal of all entitlements mentioned under the Act.

47 The identification criteria, rightly, varies from states to states, depending on the socio-economic, political and geographical considerations. However, it is seen that in certain states, the criteria were not put into public domain inviting for comments, prior to identification of households. For instance, in Telangana, it was informed that the criteria was not publicized before identification. Some criteria definitely need to be re-examined. In Chandigarh, for instance, households receiving ration/food subsidy under any other scheme is excluded from the list of priority household. Again, in Andhra Pradesh, some of the criteria for Antyodaya and Priority households remain similar. People who were getting the benefits of the Antyodaya Anna Yojana are being put in the list of those entitled under the NFSA and hence entitled for less grain. Aadhar/UID is being sought for the provision of benefits under TPDS despite Supreme Court's verdict against it.

In fact, CAG noting that states have not identified beneficiaries in a systematic manner, has recently observed that "Some states merely re-stamped their old ration cards as NFSA compliant and that too without providing for women empowerment as laid down in NFSA. What had effectively been adopted in the states was the old system, re-christened for projecting themselves as NFSA compliant."

48 Most of the departments involved in the implementation of NFSA do not have proper internal grievance redressal mechanisms. Further, citing administrative convenience and financial viability are designating District Collector, Joint Collector or District Supply Officer as District Grievance Redressal Officer (DGRO), which may be an excess load for an already overburdened office. While fresh appointment would have been desirable, in circumstances where this is considered non-viable by the states, it should be seen that in no case an officer particularly attached with the Department of Food and Civil Supplies is designated as the DGRO. It is feared that such a designation might affect the effective redressal of grievances arising from the non-provision of other entitlements under the Act. Rules have also failed to provide in detail the powers of DGRO.

49 Many States are notifying the existing vigilance committees on PDS as Vigilance Committees under NFSA. These committees were until now looking only into aspects of PDS and have not yet been provided a wider mandate. It is also seen that composition of Vigilance Committees given in the Rules of certain States is highly disproportionate, with inclusion of many ex-officio members in the Committee (See Bihar Food Security Rules, 2014). There is no due representation of local authorities, SCs, STs, women, destitute persons or persons with disability in these Committees. The inherent conflict of interests involved when the implementing agencies themselves become the monitoring bodies should also not be lost sight of. Considering the already existing responsibilities and commitments of ex-officio members, it might be a difficult task for them to effectively involve in monitoring on a regular basis.

50 Despite the decision by Government of India to provide one-time financial assistance to States/UT for non-building assets for State Food Commission, many States are yet to set up the Commission. In some states, the existing Commissions are designated as State Food Commission. For instance, in Sikkim State Commission for Protection of Child Rights is designated as State Food Commission. In some states where existing Commissions have been designated as State Food Commission, it is found that they have not been able to discharge their functions effectively. For instance, in Delhi, despite the designation of Public Grievance Commission as State Food Commission in 2013, they have not begun functioning as the strength of PGC does not fulfill the requirements laid down under Section 16 of NFSA. The

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matter is in fact pending with Delhi Government for the past couple of years. Further, whenever, the State decides to set up a Commission, it is seen that mostly this task is taken up by the Department of Food and Civil Supplies alone. These might affect the representation and also the mandate of the Commission. The method of appointment of members mentioned in most Rules also needs more clarity.

<sup>51</sup>Provisions on how social audit has to be conducted, who has to conduct it, when it has to be conducted and the non- negotiables should be included in the Rules. Whenever social audits are being conducted, for instance in case of MDMS, it is seen that the implementing agency itself conducts social audits. It is suggested that an agency independent of the implementing agencies should be identified/ established by the state government for conducting social audits. In light of the administrative and financial feasibility and keeping in mind the need for a holistic conception of food and nutritional security it is further suggested that it would be appropriate to have a single social audit agency to conduct social audit for all the schemes under the Act. These agencies should be staffed with resource persons and social auditors, who can be a cadre of individuals drawn from the local community itself.

<sup>52</sup> These are provided under Sections 24, 10(1), 12, 25(2), 26, 31 and 32 and include specific aspects pertaining to obligations of the state government for food security, provisions for advancing food security, reforms that can be introduced in TPDS etc.