



**Consultations Outcomes Submission for the**

**Committee on the Rights of the Child on Draft General Comment No. 27 on**

**Children's rights to access to justice and effective remedies**

***Organisers: Counsel to Secure Justice, UNICEF India and the***

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## **Methodology**

This section outlines the methodology employed for the national-level consultative process on access to justice and remedies for children in the country. The methodology was designed to ensure broad representation across regions and themes of child justice. The consultative process had both an online and offline component. Two physical consultations were held - one at a national level in Delhi and one at a state level in Kerala, organised by the Kerala High Court. Apart from these two consultations, an online submission process was organised to receive written submissions based on the UNICEF Consultation Guidance.

### **Data Collection**

Primary data for this consultation was collected through a comprehensive online survey developed using Google Forms. The structure and content of the form were aligned with the outcomes format recommended by the United Nations Convention on the Rights of the Child (UNCRC) while being tailored to a small extent to suit the specific legal frameworks and contexts of the country.

In addition, stakeholders presented at the consultation and provided insights on themes identified in the GC 27 concept note issued by the CRC, from various states of the country. These insights were subsequently inculcated into the final submission to ensure a well-rounded representation of perspectives. Furthermore, one organisation prepared a detailed and extensive separate submission, which was incorporated into the final submission.

### **Design**

#### **1. Online Survey**

The Google Form comprised 16 sections, ensuring thorough data collection across multiple dimensions. These sections included:

- A. Guidelines for Filling the Form - Instructions to help respondents navigate and complete the survey accurately.
- B. Demographic Information - Details of respondents, including separate sections for individuals and organisations.
- C. General Questions related to the sub-sections given in the outcomes document, such as the legal and policy framework, monitoring and oversight, etc.
- D. Avenue/Mechanism-Specific Questions (with specific explanations regarding avenues available in India)

The form was made available in both Hindi and English to maximise outreach, enabling participants from diverse linguistic backgrounds to participate effectively.

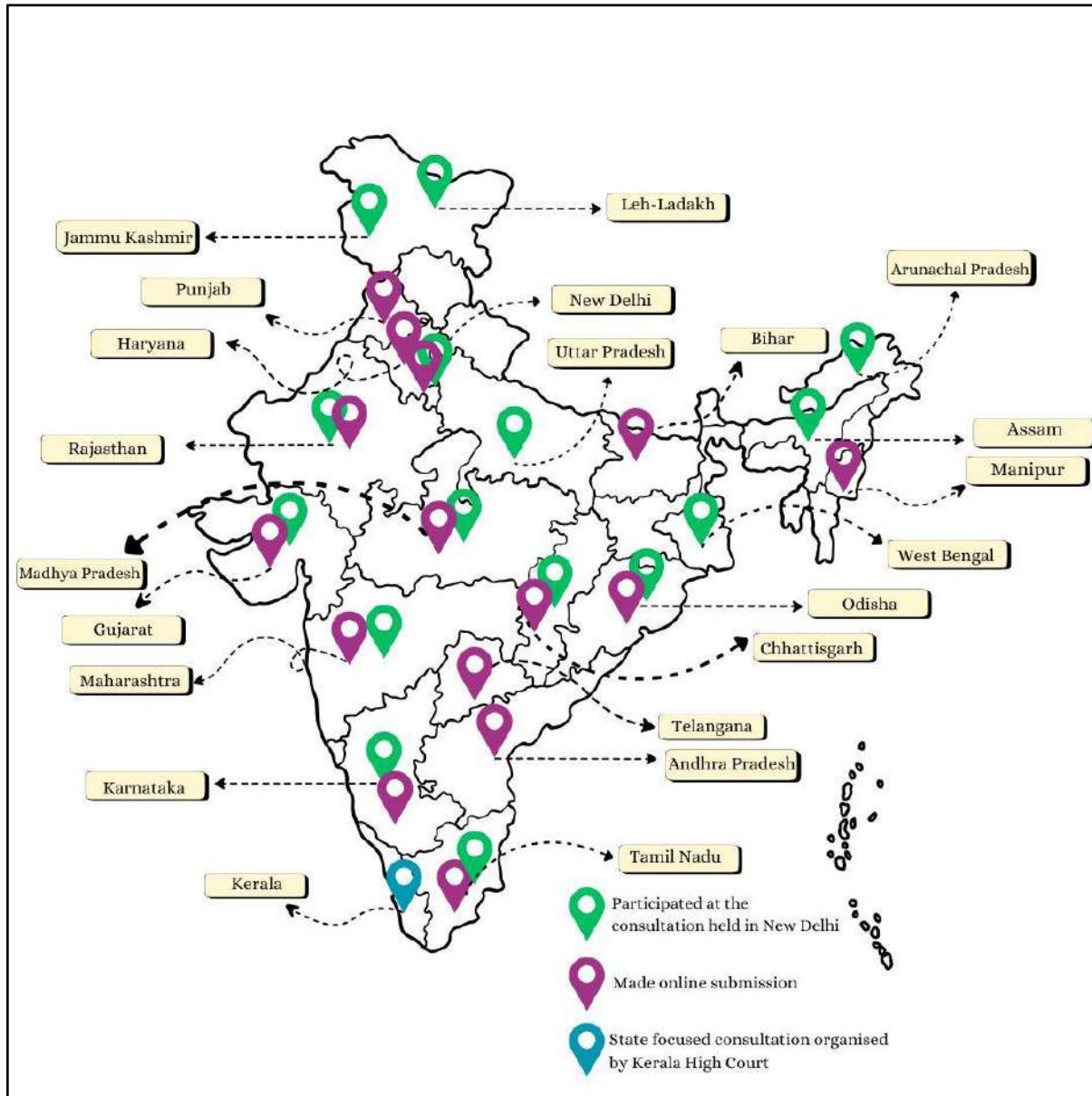
#### **2. Physical Consultation**

In addition to the online survey, a physical consultation was organised on October 26, 2024, at the National Law University, Delhi, from 9:30 AM to 5:00 PM. The event featured eight presentations, each lasting 10 minutes, followed by 10 minutes of deliberation. These presentations highlighted the unique challenges and successful initiatives specific to each state in improving access to justice for children. was followed by a moderated open house discussion. To ensure representation, it was ensured that at least 3 participants were invited from each region of the country - North, South, West, East, North-East and Central. Recommendations for participants and presenters were sought from UNICEF Child Protection offices across the country, along with experienced child rights luminaries with experience of capacity building in varied regions of the country. The participant list for the consultation is included in the supplements folder, as is the detailed agenda and the minutes of the consultation.

### **Dissemination Strategy for submissions**

To reach a wide audience, the survey was disseminated through National Law University Delhi and CSJ's official social media platforms, ensuring public visibility. It was emailed to the following child rights groups and coalitions: ProChild Coalition, National Coalition Advocating for Adolescent Concerns (NCAAC), Justice for Children Group, and Covid Response Alliance of India on Child Protection (CRAI-CP). In addition, targeted WhatsApp groups comprising stakeholders actively working with children were utilised to facilitate focused outreach.

## Geographical Coverage of the Consultative Process



### **List of Abbreviations**

CAL(PR)A	Child and Adolescent Labour (Prohibition and Regulation) Act, 1986
CCI	Child Care Institution
GiCL	Children in Conflict with Law
CLAP	Children's Legal Assistance Program
CNCP	Children in Need of Care and Protection
CPCR	Commissions for Protection of Child Rights
CSO	Civil Society Organisation
CSR	Corporate Social Responsibility
CWC	Child Welfare Committee
CWPO	Child Welfare Police Officer
DCPU	District Child Protection Unit
DLSA	District Legal Services Authority
FIR	First Information Report
GBV	Gender Based Violence
HC	High Court
HIV	Human Immunodeficiency Viruses
JJ Act	Juvenile Justice (Care and Protection of Children) Act, 2015

JJ Model Rules	Juvenile Justice Model Rules,
JJB	Juvenile Justice Board
JJC	Juvenile Justice Committee
LSUC	Legal Services Unit for Children
NALSA	National Legal Services authority
NCERT	National Council of Educational Research and Training
NCPCR	National Commission for Protection of Child Rights
NCRB	National Crime Records Bureau
NGO	Non-Governmental Organisation
NHRI's	National Human Rights Institutions
PCMA	Prohibition of Child Marriage Act, 2006
PEC	Peace and Equality Cell
PLV	Para Legal Volunteers
POCSO Act	Protection Of Children Against Sexual Offences Act, 2012
PVTG	Particularly Vulnerable Tribal Groups
SC	Supreme Court
SCPCR	State Commission for Protection of Child Rights
SJPU	Special Juvenile Police Unit

SMC	School Management Committee
VLCP	Village Level Child Protection Committee
VWDC	Vulnerable Witness Deposition Complex

## **General Recommendations and Key Overall Takeaways**

The recommendations received in this consultative process are under the following three broad umbrellas:

- (i) Better implementation of laws based on a holistic understanding of inclusion and child rights principles among stakeholders,
- (ii) Introduction of non-judicial alternatives like diversion, restorative justice, and rights-oriented community-based systems and spaces for children, and,
- (iii) Push towards availability of disaggregated data and use of technology in child protection systems

## **Specific recommendations for guidance and inclusion:**

- The ‘Principle of Inclusion’ needs to be incorporated into basic principles governing access to justice for children, to ensure safeguards against exclusion of children facing any vulnerability, be it disability, stigma, caste, race, nationality, ethnicity, class, religion, gender identity or others.
- Guidance on mainstreaming child rights concerns in policy-making, as well as clarifying that promoting access to justice is not equivalent to merely making more criminal laws.
- The juvenile justice system needs to be localised and accessible with more focus on the prevention of juvenile crime. Diversion needs to be integrated into the law that whenever appropriate and desirable, measures for dealing with children alleged as, accused of, or recognised as having infringed the penal law without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
- In addition to the above, Restorative Justice processes are currently unavailable for children under the law. It is important for it to be supported by legislative safeguards so that this option is available in appropriate cases. However, guidance is needed on the groundwork required - for example on pilots to generate evidence and develop models, so that locally appropriate legal provisions may be framed.
- Access to justice systems are still deeply discriminatory. Articulation of justice mechanisms needs to incorporate clarity on how deeply ingrained social biases like caste will be addressed.
- Clear guidance on how a child’s right to participation should be incorporated in legal proceedings - when children’s inputs should be sought - needs to be provided. Additionally, on how children’s participation can be enhanced in non judicial forums like ‘School Management Committees’.
- Factually consensual relationships between similarly aged adolescents need to be decriminalised.
- Guidance is necessary on the implication of mandatory reporting obligations which require violence against children, particularly sexual violence to be reported to law enforcement. Access to remedies in non-judicial ways to enhance children’s agency needs to be factored in GC -27.
- Implementing holistic support services: establish comprehensive support systems that address not only legal needs but also psychological, social, and economic factors affecting children. This should include access to mental health services, educational support, and family counseling.



- Prioritize family-oriented policies and programs that support parents or caregivers in providing for their children's needs. These may include parental leave policies, access to affordable childcare, and employment opportunities that ensure a living wage.
- Support initiatives for young people, like care leaver programs need to be emphasised - children leaving state care are often left to fend for themselves with barely any resources or community support.
- Guidance is necessary to ensure that data on access to justice is digitised while applying the principle of privacy and confidentiality, and such data is publicly accessible. Confidentiality must not be used as a justification for denying access to such data
- Data should be disaggregated based on gender, age, and disability and should be provided with respect to all forums, statutory authorities, and courts in a periodic manner.
- Emphasis on capacity building of all stakeholders in child protection systems - particularly those interacting directly with children, and those making pertinent decisions for children - is required. Guidance on standardisation as well as customisation to local contexts would be helpful.
- Informal community-based structures should have some recognition in law along with oversight, for cases pertaining to children in need of protection not involving criminal matters. The strong patriarchal bent of existing community based systems will need to be addressed. One recommended strategy is strengthening collaboration between local governance bodies like VLCPCs, and other non judicial bodies like SMCs, and informal justice systems to ensure that community decisions align with legal rights frameworks.
- The CRC should recognise the tension that prevails between implementing the principles of best interest of the child and evolving capacities of the child and provide guidance on how it needs to be resolved in matters related to access to justice. One method could be to provide checklists that help both states and civil society organizations to strengthen access to justice for children while applying human rights principles at various stages and levels of engagement with both formal and informal justice mechanisms.
- Guidance for ensuring access to justice in Safeguarding proceedings must be given due attention in the GC 27. Guidance must include Zero tolerance to inaction to suspicions/allegations of abuse and deprivation/violation of child rights,<sup>1</sup> key elements of robust internal complaints mechanisms, practices that promote children's right to participate *freely* and be heard in such proceedings, Minimum standards for safeguarding should be included (including access to justice) in law, and Child Protection/Safeguarding Policies should be made mandatory for CSOs, donors, and CSR funding.
- Guidance on structuring of emergency response services for children, which make them more accessible instead of aligning them completely with police systems
- Social media provides a space for children to express themselves and yet imposes many risks. Guidance on regulatory frameworks for social media and internet usage by children, and representations of children on it is required.
- Emphasis on the role of mental health care, trauma informed approaches and community based mental health systems as components of access to justice for children.
- Emphasis on a specialised cadres within judiciary, police and other institutional delivery structures for child justice systems.
- Guidance on distinguishing between rights of the child and the prosecution, which can be at odds.

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<sup>1</sup> See <https://capseah.safeguardingsupporthub.org/common-approach>

- Ensuring legal education and awareness for children so that they are aware of their rights and are seen as rights holders, further paving the way for their voices to be included in their rehabilitation plan.
- Ensuring availability of public funds for the functioning of NHRIs to support autonomy and independent functioning, and utilising these funds should be at their discretion.

## **General: Legal and Policy Framework**

Children's access to justice has been a subject of frequent legislative action in the last two decades. India incorporated key UNCRC commitments into its law with the Juvenile Justice (Care and Protection of Children) Act, 2000. A statutory framework of NHRI's focused on child rights was set out with the Commissions for Protection of Children's Rights Act, 2005. The law on child/early marriage was updated after 77 years in 2006. Rules for implementing the JJ Act came in 2007, and further amendments were made to this law, too. 2012 saw the advent of a momentous law, the Protection of Children from Sexual Offences Act, 2012, that recognised multiple forms of child sexual abuse and set out substantive provisions to make the trial process child-friendly, but at the same time raised the age of consent to 18, a factor that has had myriad consequences for India's children. 2015 saw a new JJ Act enacted that signalled a regression in UNCRC with the introduction of a judicial waiver for 16-18-year-olds. There have been amendments in both the JJ and POCSO Acts, including the introduction of the death penalty in the latter, since then, and a significant revision of the law on child labour as well. Section 2(12) of the JJ Act defines 'child' as "a person who has not completed eighteen years of age", and this is the definition in the recently enacted new penal code as well; hence, the law on paper does not exclude any child from accessing legal remedies.

Despite the frenetic legislative activity, accessing justice for children is far from easy. A consultation presentation mentioned, "[d]ifferent definitions and interpretations across these laws can confuse law enforcement and judiciary".<sup>2</sup> Institutional capacity to deliver these laws in letter and spirit remains in question.

In response to the question, "Do you believe some children are excluded from accessing legal remedies?"<sup>[1]</sup>, out of 42 responses, 69% said yes; some, many or most children are excluded.

### **Legislative changes required:**

Studies have shown that in many regions, 20-30% of cases filed under POCSO are consensual romantic relationships, leading to the criminalisation of adolescents and young adults and deprivation of liberty for adolescent girls.<sup>3</sup> The criminalisation of consensual sex, along with the severity of the offences, results in young boys and men often standing trial for offences with high minimum mandatory sentences.<sup>[2]</sup>

While the current Juvenile Justice System deals with children below 18 who commit offences, those between 16-18 years of age who allegedly commit heinous offences can be transferred to the adult system following a prescribed process. Referred to as the 'transfer system', this legislative provision introduced in 2015 is leading to children being prosecuted as adults, in gross violation of India's commitment to the UNCRC. Additionally, lack of clarity on the attendant conditions for the 'transfer' is leading to more children being transferred to the adult criminal justice system than they actually should be.

A mandatory reporting provision under POCSO imposes penal consequences on anyone who becomes aware of a sexual offence being committed against a child – this has severely curtailed the

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<sup>2</sup> Presentation by Aalima Zaidi, Association for Advocacy and Legal Initiatives (AALI), Uttar Pradesh

<sup>3</sup> Please see the written submission by 'Enfold Proactive Health Trust' in the supporting documentation folder for detailed reference

scope of support services that can be provided to children facing sexual harm who do not want to engage with the criminal justice system. It is also leading to adolescent girls not being able to access sexual and reproductive health services for fear of being reported. Recent judicial pronouncements have partially addressed this in the context of access to abortion; however, a significant impact on the ground is unlikely.

### Implementation

Processes laid out by laws are cumbersome; the policy framework still struggles with social norms curtailing access to remedy – children are discouraged from reporting in the name of ‘family honour’, caste hierarchy and other social realities – this also points to a larger malaise of using criminal law to address social problems. Multiple vulnerable groups of children are not acknowledged in legal and policy frameworks clearly – children of survivors of GBV, children living with HIV, children from Adivasi and Dalit communities, children with disabilities – children facing intersectional marginalisations, for example, girls with disabilities, face even higher exclusion. When it comes to children facing severe marginalisation, for example, children living with HIV, CSOs support them in accessing their entitlements.

Children who do not have access to adults who can advocate for them are not able to access remedies.

### Non-judicial methods

A child protection infrastructure is laid out in the government scheme ‘Mission Vatsalya’ that supports the implementation of the laws mentioned above and is responsible for prevention and awareness-related programs. It includes district-level units with social workers, counsellors, outreach workers and support staff. The number of staff allowed (maximum 16 per district), however, is completely inadequate to respond to the needs of children. For example, the scheme allows for only 1 counsellor for each District Child Protection Unit – who is supposed to provide “counselling services to children in conflict with law and children in need of care and protection as well as their parents and families.” The scheme also provides for community-based initiatives like village, block and district-level child welfare and protection committees but falls short of making a financial allocation for these; instead, it shifts that responsibility to local government bodies that are unlikely to treat this as a priority. These frameworks are aided to an extent by civil society organisations that connect children and communities to government services or work with local governance bodies like *Gram Panchayats* to promote the implementation of community-based initiatives, conduct awareness programs in schools, with grassroots functionaries like ‘Anganwadi workers’.

National Human Rights Institutions (NHRIs) - The National Commission for Protection of Child Rights (NCPCR) and the State Commissions (SCPCRs) are empowered to respond to complaints or take suo-motu action. The NCPCR has a digital complaint mechanism for child sexual abuse complaints called ‘POCSO e-Box’. Submissions mention that most of the population is not aware of these avenues.

Community *Panchayats* (community governance institutions generally including influential and elder males of a community) in villages do actively conduct ‘reconciliation processes’, however, these are heavily influenced by patriarchal and caste norms. ‘*Gram Kachabris*’ (village courts) in Bihar, headed by the Sarpanch, are one example of such a mechanism.

### Diversion:

Section 3(xv), JJ Act, 2015 provides for the principle of diversion and states that: “Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.” Diversion is possible for CICL before the start of judicial proceedings before the JJB in petty offences. Rule 10(1)(i), JJ Model Rules, 2016, on Post-production processes by the Board offers an opportunity to explore diversion in petty offences. It gives JJB the option of (i) “disposing of the case if on the consideration of the documents and record submitted at the time of his first appearance, his being in conflict with law appears to be unfounded or where the child is alleged to be involved in petty offences;” There have been some innovative programs that have been initiated on diversion in India. However, such programs are not accessible for a majority of children across the country as there are no guidelines available on diversion or adequate programs to operationalise them. Informal and non-conditional diversion does take place where the police do not bring the child before the JJB, but they do not connect the child to any rehabilitation programmes.

### Restorative Justice:

A few organisations in metros are implementing limited pilots on restorative justice processes involving children. However, this option is not present in the juvenile justice law. A recently enacted law on mediation excludes minors and criminal proceedings from its ambit.

Some organisations are using proactive restorative practices to build relationships and develop a stronger sense of community in varied contexts, for example, restorative circles in child care institutions, social-emotional learning circles in communities, and reintegration circles for children leaving care settings and being reintegrated to their families. However, very few are offering responsive/reactive services to repair harm and restore relationships through restorative justice processes for eg. Victim Offender Dialogues, Harm Circles, etc. This is, in large a measure because of severely restrictive provisions of the law on child sexual abuse in particular and rape in general.

### Children taking legal action on their own:

Under section 12 (c) of the Legal Services Authorities Act, 1987, a child who has to file or defend a case is entitled to legal services. However, practically the same cannot be done without a guardian since India follows the mechanism of indirect legal representation for children. Children cannot enter into a contract by themselves; hence a ‘*vakalatnama*’ (agreement appointing a lawyer) cannot be signed by them and must be signed by a guardian (as deemed fit by the CWC/JJB/Court).

Within the confines of the above situation, girl children particularly find it difficult to take action while facing natal family violence, according to one submission.

However, a child can approach a CWC or the police independently, and action can then be initiated, for example, the CWC passing an order for the child to be shifted to a shelter home. But this doesn’t commonly happen.

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[1] Limitation: There was an error in the Google form circulated wherein this question used the word 'exempted' instead of 'excluded' – most submissions have responded understanding the sense of the question in its original meaning.

[2] Section 4 of the POCSO Act punishes sexual intercourse with a minor with a minimum imprisonment of ten years, which can extend to imprisonment for life and a fine. Where the parties are married, or the sex is repeated, if the sex results in a pregnancy, Section 6 of the POCSO Act prescribes a minimum of twenty years imprisonment, which can extend to life imprisonment or Death.

## **General: Budgeting**

Of the submissions received, 90% answered in the negative – enough money and human resources are not allocated in India to help children access justice. As per the Budget for Children analysis undertaken by HAQ: Centre for Child Rights,<sup>4</sup> the share of child protection in the Union Budget 2024-25 is only 0.04%, while the overall share for children was also relatively low at 2.28% - a proportion that has almost halved in the last decade, from 4.52% in 2014-15.

An overall concern was the low fund allocation and declining share of federal government funding on child protection. Additionally, the investment in the child justice system is not proportionate to the population of children in the country, given that every fifth child in the world is Indian.

Multiple inputs highlighted significant delays in disbursement of funds by the central government to state government and by the government to institutions – 17 states highlighted this at a Regional Roundtable<sup>5</sup> conference with judiciary, government and civil society participation; understaffed facilities that do not comply with standards of care; no budgetary allocation for non-legal categories like children of survivors of GBV, or highly marginalized groups like children from nomadic tribal groups, children with disabilities etc.; professionals in the field like psychologists and social workers being underpaid and lacking essential skills; bureaucratic systems leading to non-utilization of funds that are allocated; non-allocation of funds for specific provisions of law relating to access to justice, for example, the POCSO Act provides for ‘Support Persons’ but the Central and State Governments are yet to allocate specific funds for this provision clearly.

One submission pointed out that case workers and probation officers do not receive adequate funds for travel expenses, especially in remote/rural areas across the country. Though the government is cognizant of reducing instances of institutionalization, the availability of human resources for probationary services is poor, with one person assigned to multiple correctional institutions, even in metropolitan cities. Appointing staff on a contractual basis (in some instances through third-party agencies) causes high levels of attrition, resulting in inconsistent and poor services to children. Even schools do not have the resources to appoint full-time counsellors. An overall lack of institutional capacity to deliver what laws have promised was a key theme that ran through consultation inputs.

On the question of human resources, a need for a transparent, fair and accountable mechanism for selecting CWC and JJB members – quasi-judicial statutory bodies tasked with rehabilitating children in the justice system. These bodies also suffer from a lack of provisioning for secretarial staff, though their decisions heavily impact the lives and liberty of children in the system.

Another critical input was that investment in ‘justice’ for children is focused primarily on institutions for children and their staff and infrastructure. Investment in capacity building, non-institutional alternatives, innovative programs for harm reduction, community awareness and prevention do not seem to be priority areas. For example, under ‘Mission Vatsalya’ – the government scheme on child protection, each ‘*Gram Panchayat*’ (village level self governance body) has to have a sub-committee dedicated to child protection, but the Central Government has allocated no funds for this, and *Gram Panchayats* have been asked to use their ‘untied’ grants for this purpose – an unlikely proposition.

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<sup>4</sup>Report available on the HAQ website at <https://www.haqcrc.org/wp-content/uploads/2024/07/bfc-2024-25.pdf>

<sup>5</sup> Report of Fourth Regional Roundtable Consultation (2018) organised by the Supreme Court and High Court Juvenile Justice Committees, as cited in the Enfold Proactive Health Trust submission

### **General: Monitoring and Oversight**

On the question of the availability of data regarding children's access to justice, there is a consensus that some data is available, in the form of the records released annually by the 'National Crime Records Bureau' (NCRB), that includes details of crimes by and against children, but this is not enough to understand the landscape of access to justice for children. Sketchy, limited, half-baked, not systemised, not publicly available, highly fragmented, and only state-specific are some of the qualifiers used in submissions. Lack of data is more pronounced when it comes to vulnerable groups of children, for example, children with disabilities or children using substances – both of which are serious concerns emerging. NCRB data is not disaggregated based on social marginalisations. This state mechanism has also been criticised for being only quantitative and not including qualitative aspects. This data is also necessarily severely limited because of barriers to reporting. Even disaggregation present earlier, for example, the educational and socio-economic status of children in the justice system, is not included anymore. Similarly, sex and age disaggregated data regarding child victims under the Child Labour (Prohibition and Regulation) Act, 1986, and The Prohibition of Child Marriage Act, 2006, is not available.

Publicly available data sources such as judgments of courts have enabled civil society organisations to undertake empirical studies that have revealed the status of access to justice for child survivors of sexual violence, victims of child labour and child marriage, among others. Additionally, qualitative studies by different organisations on implementing the different child protection laws have illustrated the deficiencies concerning access to justice for children, such as access to compensation, weak awareness among stakeholders, and weak compliance with child-friendly procedures.

However, there is a tension between ensuring confidentiality and making data related to children's access to justice publicly available. For instance, judgments/orders of Juvenile Justice Boards (JJBs) and Children's Courts are not publicly available. As a result, few studies deal with access to justice for Children in Conflict with Law (CiCL), and there is a lack of accountability in the juvenile justice mechanisms in India. There is also a dearth of data on children's experiences accessing justice mechanisms, such as registering a 'First Information Report' at a police station - apart from qualitative studies conducted by civil society organisations. There is a complete lack of disaggregated data on access to services; for example, how many transgender children have access to mental health services?

The Supreme Court and High Court 'Juvenile Justice Committees' have acted as important oversight mechanisms and provided a forum for multi-stakeholder consultations at the state, regional and national levels starting in 2014. However, an issue highlighted at the consultation was a conflation between the roles of the judiciary and the executive - matters which ought to go to the judicial side are going to SC and HC committees, leading to a back-and-forth between administrative and judicial mechanisms. The monitoring formats used by the administrative and judicial apparatus are heavily quantitative and, hence don't present a complete picture.

The National and State Legal Services Authorities monitor legal aid to children as provided by their statute, although the efficacy of this monitoring mechanism is unclear. There is an overall sense that



monitoring systems are overwhelmed and under-resourced. They are also siloed and sporadic – for example, whereas the infrastructure of ‘Child Care Institutions’ is monitored through multiple mechanisms like government departments, the HC Committees and NHRIs, the quality of legal aid to children in these institutions is not a frequent subject of scrutiny. Additionally, NHRIs (the National and State Commissions for Protection of Children and National and State Human Rights Commissions) and DCPUs (District Child Protection Units – the implementation unit of child protection systems that monitor Child Care Institutions) are all state-funded institutions and hence have a limited approach to monitoring access to justice.

With regard to informal justice systems, there are no monitoring mechanisms; in some cases, district-level institutions like CWCs and DCPUs may monitor to some extent, but it is generally not seen as a mandate. Other non-judicial avenues of accessing justice, like school safety committees, are not monitored – one submission mentioned an instance of their having to intervene when members of such a committee tried to get students expelled from school.

### **General: Services and Programmes**

There is a statutory framework for the provision of legal representation, laid out by the Legal Services Authorities Act of 1987, that provides for Legal Services Authorities at the national, state, district and sub-district levels. The National Authority (NALSA) also provides a facility for paralegals, who are placed at police stations or other community interfacing mechanisms and are trained by the District Legal Services Authority (DLSA) to address and provide information to the public on legal remedies available. NALSA has also notified the 'Child-friendly Legal Services for Children Scheme, 2024' recently after a consultative process, providing for separate panels for lawyers.

Civil society organisations specifically provide psychosocial and legal support, typically at district or sub-district levels. Apart from these services, the state also rolls out several schemes, notably the Mission Vatsalaya scheme, which includes national, state, district, block, and village structures. These also include national-level helpline numbers for children. At the district level, there are Child Welfare Committees, Juvenile Justice Boards, and District Child Protection Units, to name a few. There are children's committees and management committees in childcare institutions per the Juvenile Justice Act of 2015. There are Children's Parliament, Bal Panchayats and awareness programs by Commissions for Protection of Child Rights (CPCRs).

National-level provisions for children's education include the Right to Education Act of 2009 and the Sarva Shiksha Abhiyan (Universal Education for Children) of 2001. Under education, the National Council of Educational Research and Training (NCERT) syllabus introduces child rights concepts. Personal safety programmes are included in the school curriculum and taught in schools. Child sexual abuse awareness campaigns are organised to ensure that children are aware of their rights. Educational institutes have also taken initiatives, such as the helpdesks set up by the Tata Institute of Social Sciences..

These are also online initiatives with limited outreach launched by state governments and CSOs, for example Haqdarshak, an NGO initiative to provide information on government schemes, and Massom, an e-postbox by the National Commission for Protection of Child Rights (NCPCR), for reporting of sexual offences against children.

Submissions have pointed out the impact of integrating the national helpline for children, 'Childline' with the police's emergency response system saying Childline's outreach and response has taken a hit after being taken over by the Government. Children are believed to find it harder to reach out if they know that the police will take the call.

### **Mechanism: Representation**

On the question of whether a child can personally bring a matter to attention with a specific avenue, submission no. 46 sums it up succinctly – “To date, our organisation PEC only has experience dealing with 2,4 and 5 [NHRI, Judicial matters: civil and judicial matters: criminal – this would be true of most child rights organisations]. In theory, children have the legal right to complain or use all three avenues, but because of their age, the family, community, and social power structure, it is very rare for children to be able to exercise this power, so largely, it is parents, CSOs, DCPUs and Support Persons who activate these avenues.”

Apart from these, the following were also mentioned as people/institutions who could raise matters related to child rights violations: CWCs on their cognisance, Childline, Counsellors, PLVs, neighbours, trusted family members, educational institutions/teachers/school officials, public-spirited citizens, community members, any person trusted by the child, DCPUs, Child Welfare Officers or staff of CCIs, social workers, Police/CWPOs/SJPU, CSOs, Caregivers, Community Leaders, Public Interest Litigators, State taking *sup motu* cognisance [this has been done by NHRIs, Courts at all levels, Administrative heads like District Collector etc], Lawyer appointed by the DLSA, Labour Inspector, Public Servant, Doctors or Nurses. Submission No. 16 pointed out that all of these different groups can raise concerns regarding ‘CNCP’ [or child victims]; for CiCL, the SJPU or any police officer can produce the child before a JJB. Submission no. 53 points out, though, that the “right of CNCP to representation during care proceedings before the Child Welfare Committee (the competent authority for assessing and determining the child’s best interests) is generally not recognised in India as it is assumed that the CWC will always act in their best interests. These children do not receive independent representation from advocates or a guardian *ad litem*. Further, their caseworkers/child welfare officers/counsellors also do not have an opportunity to present and defend their submissions before the CWC.”

Children can be heard in person in all the formal avenues, and the abovementioned categories can **represent their views**. Response No. 17 elaborates on the NALSA Child-Friendly Legal Services Scheme, 2024, which provides for a ‘Legal Services Unit for Children’ (LSUC) to be set up in each district under the DLSA. The LSUCs have been mandated to provide free legal representation to CNCP, CiCL, child victims of crime, children believed to be missing/trafficked, and children who otherwise come in contact with the law. This scheme, as well as the JJ Act, especially through the ‘Principle of Participation’ in Section 3, emphasise the obligation of consulting with the child while representing their interests. However, this is often not realised on the ground. One submission points out that “[B]est interest is often used to sideline child participation across avenues.” Many judicial pronouncements also highlight the importance of consulting children while making decisions relevant to their interests – for example, the Delhi High Court in *Miss G vs NCT of Delhi* emphasised the right of the child victim’s opinion to be mandatorily heard while considering bail to the accused person. However, these piecemeal pronouncements also point to the reality that the realisation of this principle of participation has not been thought through and needs greater procedural clarity.

The state of Kerala in India has an initiative titled ‘CLAP’ – Children’s Legal Assistance Program, that was started by the bar in collaboration with the judiciary when it was noticed that children’s rights and concerns were not being adequately represented in matrimonial or family dispute matters, in civil proceedings. This is also an area highlighted in other submissions, requiring clarity and guidance.

### **Mechanism: Acceptability and Trust**

Though six avenues were mentioned for the response, the respondents focussed on two broad categories- access to NHRIs and the judiciary.

Of the 43 respondents to the question of whether it is culturally and socially acceptable for children to resort to this avenue, 37.2% believed that it was acceptable for children to access it. However, 46.5% responded that it was difficult for children to access this avenue because of cultural norms in the country, and 13.9% mentioned somewhat or maybe.

Children are not encouraged to resort to legal remedies regarding reporting. Compliant children are an acceptable norm because of cultural norms around 'respecting elders' essentially focused on not raising questions about the behaviour of adults or challenging authority. These cultural norms are further influenced by caste, gender, socio-economic profile, geographical location, and other vulnerabilities like disability. A submission pointed out the experience of children from an indigenous community, a 'Particularly Vulnerable Tribal Group' (PVTG) - the Katkari nomadic tribe in the states of Maharashtra and Gujarat, wherein legal mechanisms are considered alien and distant.

However, according to other submissions, reporting in severe sexual harm cases is plausible with the caveat that the case is against an outsider or stranger, whereas, reporting isn't encouraged if the perpetrator is from the same family. Social and familial constraints are enormous when it comes to reporting. Children and families face ostracisation if there is a sexual abuse case which impacts the mental health of the children. In some cases, children are sent to institutions which further isolate the children.

Out of 43 responses, 60.4% mentioned that children face negative repercussions when they access their legal rights through any of the avenues, especially if there is abuse within the family.

The avenues mentioned are generally not trusted by the population due to bureaucracy and the slow justice system process unless civil society or someone influential is involved to support them. Children and their families receive minimal information from legal aid lawyers on their case's progress and struggle to get documents about their matter. The lack of trained judicial and legal persons in the system further leads to the re-traumatization of the children. The perception of bias and unfriendly experiences in the system exacerbates this.

A consultation presentation from the state of Rajasthan,<sup>6</sup> focused on 'informal justice systems', mentioned the high prevalence of '*Jati Panchayats*' (Caste based community governance bodies), whose decisions are final and have a lasting impact on children's lives - these bodies can support or oppose children's rights through their decisions, but inevitably suppress issues to avoid legal proceedings. Particularly in matters involving children's agency, these structures push for 'compromises', which are not in the child's best interest. They often prioritise social norms over children's rights, particularly for issues like child marriage. Long-term community-based work by CSOs, introducing initiatives like sports for girl children, has positively impacted these community systems.

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<sup>6</sup> Sylvester Ariel from Mahila Jan Adhikar Samiti, Rajasthan

Another presentation from the state of Chhattisgarh on children from Adivasi/indigenous communities<sup>7</sup> referred to the criminalisation of customary practices of Adivasis, which further impedes trust in formal justice mechanisms.

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<sup>7</sup>Presentation by Sarwat Naqvi, former CWC Chairperson, Chhattisgarh

### **Mechanism: Procedural safeguards and child-sensitive measures**

Out of 42 submission responses to the question “Are procedures designed to fit children’s needs?”, 20% have responded with an unqualified yes. However, most responses congregate around the central theme summarised in Submission No. 14 – “By design they are, in practice they are not”.

The question on adequately trained professionals in justice systems received an almost unanimous ‘no’ response. The following important concerns were highlighted in this regard: Training is inconsistent, trained professionals are available only in metros, areas of inadequate capacities pointed out were inappropriate language use, lack of inclusive and trauma-informed approaches, ill-equipped to work with specific marginalisations like disability, terminal illness, from disadvantaged communities like indigenous populations or Dalits, trust building with children, adequate awareness of legal provisions – all of these factors leading child protection staff to further revictimization instead of curtailing it.

There seems to be a lack of a ‘knowledge, attitude and practices’ approach in most capacity-building initiatives. Training hitherto, even for stakeholders for whom it has happened consistently, has failed to bring about an attitudinal change. The influence of class, caste and patriarchy is still very strongly seen, according to some submissions.

Submissions also mention that the training that does happen is often sporadic, in an ineffective lecture format, for large numbers of personnel going up to hundreds, making them meaningless. Hence, having a section on training methodologies and approaches in GC 27 would be helpful. Submission No.6 pointed out how “[m]any training programs are organised in the last quarter of the fiscal year simply to use allocated budgets, resulting in rushed and ineffective training without proper follow up or evaluation.” This points to a need for project management and budget planning skills to be included in personnel training rather than just the minutiae of laws and regulations.

On the question of whether legal aid and representation are available and accessible for children, again, most submissions agreed that though legal aid was technically available, accessibility remains a significant challenge, particularly for more vulnerable children in rural/tribal areas, etc. Community-based organisations have averred that hardly any child they come in contact with is aware of their right to legal aid. One submission mentions the unhelpful attitude of DLSA staff even when a child and family come to their office.

### **Mechanism: Information and Support**

The mechanisms most responses pertained to were judicial systems and NHRIs. Out of 37 submission responses [not including Enfold, etc.] on whether information is available, child friendly, and in accessible languages, 18.92% of the 37 responses answered with an unqualified yes. 27.02% responded with an unqualified no. The majority (29.7%) responded with a qualified no. Some key issues highlighted with information material/support available were: information on important problems that children face is available only in English or heavily Sankritised Hindi; information on judicial-criminal systems is not presented in a child-friendly manner, materials lack simplicity and clarity, nor is it translated into local languages or adapted to literacy levels of children from marginalised communities; children with disabilities like hearing impairments do not have access to sign language interpreters; laws like the JJ, POCSO, PCMA, CAL(PR)A provide for the police and/or DCPUs to provide information to children on legal aid, available resources like counselling services, provide copies of court documents etc– but these are not realised on the ground.

A good practice mentioned is that SCPCRs have made information on child protection available in local languages. This has been done for judicial-criminal mechanisms too in certain states, however, according to one example, these resources are not routinely available at police stations and are given only when asked for.

Legal aid through DLSAs, housing and care through CCIs, social support through CWCs, DCPUs, NCPCR and SCPCRs (more case and situation-based), support persons in reported child sexual abuse cases, paralegals, counsellors in institutions, DCPUs, schools, paralegal volunteers (PLVs) in police stations are the support services mentioned in submissions. However, these are available primarily in bigger cities, especially the provision of support persons, which was highlighted in a recent Supreme Court judgement too.<sup>8</sup> Support persons are currently provided mainly by CSOs and not the government.

Lack of knowledge among courts for support-related provisions was highlighted; for example, POCSO court judges were not aware of the statutory right of a victim to have an advocate under S. 40 of the Act. Significant infrastructural provisions are being made for child survivors of violence through ‘Vulnerable Witness Deposition Complexes’ (VWDCs) – but currently, most states lack this infrastructure, and children do end up facing the person who abused them in courts.

Universal accessibility, including digital accessibility, is identified as a need. Complaint forums are currently not accessible. For example, children or guardians can make a complaint to their SCPCR or the NCPCR, if they can write and are aware of the website. Submissions point out that the quality of support available is inconsistent, personnel lack child-specific training, and there is little monitoring. A dearth of specialised mental health professionals was mentioned.

Regarding children being informed of the outcome of procedures, out of 31 responses, 22.5% said that children are *not* informed of the outcome. Multiple other avenues were mentioned by other respondents, including support persons, legal counsels, welfare officers, police, judges – pointing to a lack of clarity regarding this. It was also pointed out that statutory judicial bodies do not explain to the child how they arrived at a decision or outcomes, which are explained in complex legal language

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<sup>8</sup> **Bachpan Bachao Andolan v Union of India & Ors** [2023] Writ Petition (Civil) No 427 of 2022 (SC, 18 August 2023)

that is difficult for children to understand. For children with hearing impairment, there is no practice of using an interpreter for this purpose.

Regarding NHRI, it was mentioned that NCPCR does not share updates/outcomes with the complainant and in many cases

A consultation presentation on children's right to participation<sup>9</sup> mentioned how media reporting is a detrimental factor. Yet, children have no voice in the media, and reporting is often one-sided. Another presentation focused on how a lack of information in vernacular language acted as a significant barrier in accessing justice for children from Adivasi/indigenous communities.

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<sup>9</sup> Presentation by J.B. Oli from Butterflies, Delhi



## Remedies and Reparations

Although the GC27 concept note defines remedies as not necessarily within the ambit of the formal justice system, submissions have focused primarily on judicial or formal remedies available and the lacunae therein.

The following remedies were mentioned:

**Judicial remedies** include compensation, protection orders, custody arrangements, and institutional and non-institutional care options, the latter of which include foster care, sponsorship, aftercare, and adoption.

**Community-based remedies include** Community-based safe spaces and mentorship programs, informal dispute resolution mechanisms including ‘village panchayats’, ‘caste panchayats’, etc

Submissions frequently mention services and forums from which remedies can be accessed as the remedy itself, for example, legal aid, and judicial statutory bodies like CWCs and JJBs – pointing to the reality that the capacity to access a remedy is as crucial as the remedy itself. One submission stated: “While compensation and rehabilitation is seeing an upward trend, satisfaction and guarantees of non-repetition is a distant dream.”

**In judicial remedies**, the following issues were pointed out: Lengthy, tedious and insensitive legal procedures impact the enjoyment of remedies by the child and lead to revictimization – for example, in POCSO cases, trials go on for so long, and compensation accessing procedures prove so challenging that survivors want to walk away from the judicial process completely. Despite the law containing expansive compensation provisions for different stages in the recovery of a child who has faced sexual violence, studies show that compensation is ordered infrequently by Courts.

Institutionalisation is still the most frequently chosen remedy for children coming into the justice system despite the law providing multiple options to promote rehabilitation and reintegration. Remedies often do not address root causes of rights violations, and children accessing the justice system do not often receive long-term support. Institutions are also not able to provide the kind of rehabilitative services envisaged by laws due to understaffing and lack of capacity in non-judgemental and trauma-informed attitudes. Additionally, lack of quality in rehabilitative mechanisms like an ‘Individual Care Plan’ to be prepared for every child, and a ‘Social Investigation Report’ by caseworkers/probation officers to inform the decisions of CWCs/JJBs – these documents are rarely prepared with the kind of thought and background work ideally required for them, if at all. Children facing further vulnerabilities like disability or terminal illness face stigmatisation and ostracization within institutions – care institutions within the child protection system, specifically for children facing marginalisations like disability, are generally absent. All of these factors combine to result in overcrowded institutions, which fail to deliver the kind of remedy the law promises. Research has documented the adverse impact of institutionalisation on children rather than a rehabilitative and reintegrative one.

Limited availability of support services like counselling in remote areas of the country further limits the quality of remedies available to the children of India.

### **Mechanism: Outreach and Non-Discrimination**

Out of 39 submission responses to the question “[D]oes the system consider the special needs of vulnerable children and adjust its services to help them?” 28.2% of the respondents answered with a clear negative, whereas the majority 38.46% gave a qualified negative. Hence more than 60% considered this need unmet.

In response to the question “[A]re any groups of children left out or discriminated against...?” 31.57% of the 38 responses were in the affirmative, with little or no qualifications. 50% responded with a qualified yes, thus more than 80% have observed discrimination in child justice systems. An important observation in one submission was, “Law speaks of all children, but the vulnerability index of the child determines their actual access”. The following axes of marginalisation for children were identified in submissions/consultations:

- a. Children with disabilities/medical conditions in remote/rural locations
- b. Children with multiple disabilities
- c. Children in street situations lack stable shelter, education, and healthcare. The absence of documentation makes access to justice and legal protection difficult.
- d. Migrant children- socio-legal invisibility due to lack of documentation, which blocks access to entitlements like education
- e. Refugee children- legal invisibility due to lack of documentation
- f. LGBTQIA+ youth- they experience legal and social exclusion, exacerbated by discrimination, lack of recognition of their identities and fear of retribution. Intersex children see the maximum gap as the need for gender categorisation is so high. There is limited understanding of gender structures, and they are confused as trans persons.
- g. Children from the Adivasi (indigenous) community – further marginalisation within this is faced by children from so-called ‘de-notified tribes’ – indigenous populations that were labelled ‘criminal’ during the colonial era, and the influence of those policies still remains; Children from Particularly Vulnerable Tribal Groups (PVTGs)
- h. Children from the Dalit community, Children from so-called ‘lower’ castes intersecting with economic vulnerability
- i. Children of survivors of GBV
- j. Children living with HIV
- k. Children abusing substances in both CNCP and CiCL categories- especially girls.
- l. Boys with respect to reporting of sexual offences
- m. Adivasi/indigenous children from areas affected by civil unrest face marginalisation and displacement, exposed to the risk of recruitment, trafficking and abuse

Regarding costs involved in accessing justice and barriers faced, though all services are available free of charge, but “justice is neither cheap, nor is it easy” in the words of a presenter from Chhattisgarh, a state with a significant indigenous population. Indirect costs including travel from remote areas for multiple hearings, mistrust in legal aid leading to the cost of legal support, and loss of daily wages for parents/caregivers of children in the justice system.

Barriers to accessing justice mentioned were – geographical barriers/lack of transport, combined with the reluctance of administrative staff to follow provisions regarding reimbursement of expenses for witnesses, socio-cultural stigma discouraging families from accessing justice systems; administrative hurdles and excessive bureaucracy; lack of information in accessible languages; infrastructure not being designed keeping access needs in mind, particularly for children with disabilities and lack of proof of age confirming status as a child.