

## **Seminar on Child Rights Strategic Litigation A Concept Note**

Organised by  
Delhi Commission for Protection of Child Rights (DCPCR)  
Government of NCT of Delhi  
and  
HAQ: Centre for Child Rights

16 March, 2023  
Delhi

### **Background**

Although seen as extensions of their parents and not eligible to vote, children are equal citizens of the country and their rights too are human rights.

In fact, they are more vulnerable than adults to the conditions in which they live. Hence, they are affected more than any other age group by the actions or inactions of adults around them, particularly the duty bearers.

In the last two decades, children's rights have received attention from both policy makers and implementers globally.

India has witnessed substantial changes in its legal and policy framework; and commitments to children, especially after ratification of the UNCRC.

#### **Constitutional Guarantees meant specifically for children include:**

- Right to free and compulsory elementary education for all children in the 6-14 year age group (**Article 21 A**)
- Right to be protected from any hazardous employment till the age of 14 years (**Article 24**)
- Right to be protected from being abused and forced by economic necessity to enter occupations unsuited to their age or strength (**Article 39(e)**)
- Right to equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and guaranteed protection of childhood and youth against exploitation and against moral and material abandonment (**Article 39 (f)**)
- Right to early childhood care and education to all children until they complete the age of six years (**Article 45**)

#### **Besides, Children also have rights as equal citizens of India:**

- Right to equality (**Article 14**)
- Right against discrimination and duty of the state to take to special measures for children (**Article 15**)
- Right of convicts against being subjected to double jeopardy (**Article 20**)
- Right to personal liberty and due process of law (**Article 21**)
- Right against illegal arrest and detention and right to legal representation (**Article 22**)
- Right to being protected from being trafficked and forced into bonded labour (**Article 23**)
- Right of minorities for protection of their interests (**Article 29**)
- Right of weaker sections of the people to be protected from social injustice and all forms of exploitation (**Article 46**)
- Right to nutrition and standard of living and improved public health (**Article 47**)

Recognising that children are not a homogenous group, the legal and policy frameworks spell out various safeguards and provide for distinct and special measures for those more vulnerable on account of their age, gender, caste, religion, ethnicity, disability, geographical location and difficult circumstances in which they find themselves such as child labour, trafficking, sexual violence, civil unrest, children out of school, children in conflict with the law, etc.

The national commitment to address children's civil, political, economic, social and cultural rights is reinforced through the Constitution of India, a plethora of special laws and legal provisions, the National Policy for Children, 2013, the National Plan of Action for Children, 2016, the National and State Commissions for Protection of Child Rights and a range of other measures. Yet, access to justice remains a challenge for children. In the past several decades, India has made substantial progress. However, a lot remains to be achieved in terms of improving children's experience of the justice system.

### **Legal Response Children's situation in recent times paint a confused canvas**

A total of 1,49,404 cases of crimes against children were registered in 2021 as per the Crime in India Report of the National Crime Records Bureau (NCRB), with an increase of 16.2% over the previous year.

The report also revealed that a total of 31,170 crimes in 2021 were allegedly committed by children below the age of 18 years. The rate of conviction in cases alleged against children was as high as 87.8% in 2021 while that for crimes against children was only 33.5%.

At the end of 2021, trial was pending in 94.2% cases of crimes against children, and 52.1% cases of children in conflict with the law apprehended under the juvenile justice law. Reporting and disposal of certain crimes against children such as child labour, child marriage and child trafficking is particularly low.

The first two decades of India's ratification of the UNCRC witnessed legal reforms to bring the law in conformity with India's international human rights obligations. Laws such as Protection of Children from Sexual Offences (POCSO) Act 2012, and Juvenile Justice (Care and Protection of Children) Act 2000, which was later repealed by the 2015 Act, have provided for the much-needed legal framework for child protection to realise the goals set out in the UNCRC.

As the reporting systems, technological penetration and governance processes improve, cases are on the rise. This does not necessarily mean that incidences of cases against children are increasing. The media has captured the attention for reasons sensible and sensational, often resulting

in both: nuanced response from the government as well as a knee-jerk reaction.

One of the responses has been in the form of introducing stricter sentences hoping this would serve as a deterrent. Unfortunately, lesser attention has been provided to core issues such as strengthening legal aid, criminal justice system, enforcement of safeguards for children, sensitisation and building capacity of the stakeholders involved amongst others.

The number of children unable to access their rights remains worryingly large. Discrimination, prejudice, and brokenness of the processes pervades the system.

Advancing children's rights requires a range of actions beyond putting in place a vast legal, policy and programme framework. Evidence-based advocacy, including strategic litigation, is a tool that can help in ensuring desired law reform as well as better implementation of policies, laws, and programmes, while catering to both individual and collective rights of children.

Making "justice" accessible and real requires an understanding of children's experiences with the justice delivery system. Often, children who come in contact with the justice system are left without any kind of effective support in the judicial process.

### **Advancing Child Rights Strategic Litigation**

Frequent changes in laws with added confusions and the implementation gaps provide an opportunity for child rights advocates to engage with strategic child rights litigation for promoting and protecting children's rights.

According to a three-year global research collaboration on Advancing Child Rights Strategic Litigation (ACRiSL), "*Child rights strategic litigation (CRSL) is litigation that seeks to bring about positive legal and/or social change in terms of children's enjoyment of their rights.*"

Children and their concerns require legal representation at various levels of the judiciary, starting right from the trial courts to the courts holding appellate jurisdiction, the High Courts and the Supreme Court that have the power to uphold fundamental rights and guarantees.

While human rights in general has attracted many practicing lawyers, human rights of children are yet to attract the attention and sensitivity they deserve. It goes without saying that much depends on the preparedness, understanding, approach and perspective of the lawyers' representing children and their issues.

Child rights lawyering requires a shift in the perspective of lawyers, a conscious and well understood departure from the conventions of the justice system with a nuanced understanding to create and evolve child rights jurisprudence through the trial courts as well as litigation in the High Courts and the Supreme Court of India.

Although a constitutional guarantee and backed by a law, children's access to free legal aid is not easy to come by and they often succumb to the poor quality of legal aid, which defeats the ends of justice. Even with the best of intentions, the legal aid services fall short on many counts, be it quality, technical knowledge, supervision, or numbers of dedicated legal aid lawyers for matters concerning child rights.

With more lawyers and organisations providing pro bono legal services, it becomes imperative to engage with child rights strategic litigation and understand what it requires to bring the desired change.

### **The Seminar**

It is in this background that the Delhi Commission for Protection of Child Rights (DCPCR) and HAQ: Centre for Child Rights have decided to jointly organise a seminar for Child Rights Lawyers and Organisations working on improving children's access to justice.

The programme will have eminent panelists such as Prof. Ann Skelton, Advocate Maharukh Adenwalla and Advocate Anant Asthana to present their views and interact with child rights lawyers and organisations on the 16<sup>th</sup> of March, 2023 from 10 am to 6 pm.

### **Design of Seminar**

The seminar envisages participation of advocates, activists, professionals and civil society organisations working in the field of children's rights.

Those interested in participating are encouraged to submit a note (not more than 3 pages) on the URL: <https://bit.ly/3Yyl96C> by 5th March 2023. The note must highlight the following:

- a. their bio or description;
- b. the problem intended to be solved through the case;
- c. the court case (existing or the planned) that they are/wish to litigate;
- d. a synopsis of the court case;
- e. evidence bearing the arguments made;
- f. the status of the case, if the case is already in a court
- g. specific questions/queries for feedback, comments or inputs

Please note, because of paucity of time only 12 case studies will be selected for detailed discussion. You are most welcome to participate in the seminar even if not selected to present your case study.

## About the Panelists

1. Prof. Ann Skelton is currently serving as a Member of the UN Committee on the Rights of the Child (UNCRC), the apex body of the United Nations High Commissioner for Human Rights that monitors implementation of the Convention on the Rights of the Child by the States Parties.

Dr. Skelton is a Professor of Law at the University of Pretoria, South Africa, where she holds the UNESCO Chair in Education Law in Africa. She is also the Director of the Centre for Child Law which promotes children's rights in South Africa through advocacy, law reform, research and litigation.

Widely published, and with 30 years work experience involving arguing several landmark child rights cases in the Constitutional Court, her work and global influence has been recognised through the Juvenile Justice Without Borders Award (2017), the honorary World's Children's Prize (2012), and involvement as chairperson of the Advisory Board of the United Nations Global Study on Children Deprived of their Liberty.

2. Advocate Maharukh Adenwalla has been providing legal advice and services since 1985. She is an independent human rights lawyer with special interest in children's rights. As an Ashoka Fellow, she is recognised for using case law to push legislation protecting children in distress, while educating the public on legal interventions that are available to children and current inadequacies of the law that must be addressed. She has represented both children who are victims of crimes as well as children who come in conflict with the law in the trial courts, High Courts and the Supreme Court.

Her work on juvenile justice and with children in conflict with the law has guided not just individual lawyers representing children but also the national discourse on the subject. She was a guiding force in the all-India campaign to protest the shifting of children into the criminal justice system. She has also authored several publications on juvenile justice, implementation of the POCSO Act and other child rights laws.

3. Advocate Anant Asthana is a Delhi based child rights lawyer and has engaged in several strategic litigation on children related issues. He has engaged with judicial, government and non-government stakeholders across India as a technical trainer and faculty on children related laws.

In 2008-09, he was instrumental in setting up a Legal Aid Model for children in conflict with law which was subsequently adopted by the

Delhi State Legal Services Authority and is considered as a model legal aid programme in the country.

He is presently designated as the Ombudsman for legal aid to children by the Delhi State Legal Services Authority. He is appointed as amicus curiae in several cases and nominated as member into various committees on children's issues constituted by the Delhi High Court. His cases have influenced the JJ Act, 2015 and State Juvenile Justice rules of many states. As part of Government Drafting Committees, he has drafted Juvenile Justice Rules for the State of Jammu and Kashmir (2014), Gujarat (2019), Rajasthan, Uttar Pradesh, Madhya Pradesh and NCT of Delhi.