

Parliament as a Custodian of Rights: Is the 'Child' included¹

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Abstract

This paper examines the role of the Parliament in promoting and addressing child rights. Through an analysis of parliamentary debates surrounding the adoption of key policy documents since Independence, the paper endeavours to sketch the evolving national vision of the 'child', the accompanying national discourse and the policy provisions that emanate from it. The paper also critically analyses the manner in which children's rights are positioned and mainstreamed in Indian parliamentary agenda by examining allocations for children in the Budget, the quantum of questions raised on children during the Question Hour and a synoptic analysis of certain child-specific and non-child-specific legislations. The last sections look at the perceptions of policy makers especially Members of Parliament across party lines with the question of child rights. Drawing on the Amartya Sen's concept opportunity aspects of freedom, the study foregrounds the importance of child rights in democratic citizenship and proposes a set recommendations emanating from the study to mainstream child rights in the Parliament.

Key Words: *Parliament, Custodian of Rights, Child*

Introduction

In 1959, as one of the founding members of the United Nations, India adopted the UN Declaration on Rights of the Child. It ratified the Convention on Rights of Child in December, 1992. However, long before the Child Rights Movement gained international recognition through the United Nations Convention on the Rights of the Child (UNCRC) 1989, India had already recognized the basic rights of children. India began its journey towards the goal of universal child rights in 1950; with the Indian Constitution unequivocally expressing its commitment to the basic rights of the child, as citizens. Through the Directive Principles of State Policy, the Indian constitution also directed states to States to provide for early childhood care and education for children bellow the age of six years. The struggle to

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translate constitutional principles to action began forthwith. Today as the world celebrates the 30th year of the UNCRC, India's journey reflects a tale of milestones and shortcomings; of well-meaning goals and policies which till date have not been transformed into child rights in the full sense of the term.

Children occupy a unique yet diminished position in the Indian political economy in terms of demography, constitutional status and status of development. India is home to the largest under 5 population in the world i.e. 121.3 millionⁱ. It also houses the largest youth population with 422 million young persons aged between 10-24 yearsⁱⁱ. Each and every child is guaranteed the right to liberty, equality, non-discrimination, and freedom from exploitation in Articles 16ⁱⁱⁱ, 14^{iv}, 15^v and 21^{vi} of the Constitution. Recently enough, through the 86th Amendment to Article 21 of the Constitution, free and compulsory education was included as fundamental right for children in the age group of 6-14 years under the Right to Education.

In terms of developmental policy and international commitments, the country performs well on certain parameters. India has the one of the largest (2nd) school networks in the world^{vii}. There are a total of 11, 02,783 government managed school and another 83,787 government aided schools^{viii}. The Midday Meal programme serves more than 10.35 crore children,^{ix} it is one of the largest school enrolment and nutrition programmes in the world^x.

In terms of policy discourse, India has been clear and progressive in its stance. The first National Policy for Children was introduced in 1974 which directed the State to ensure the health, education, nutrition needs of children^{xi}. For the first time a national document emphasized upon the needs and requirements of children with special needs. In 2003, a National Charter for Children which expressed the Government of India's intent towards the overall development of all children was released. Protection for the girl child was outlined as a key issue. The year 2005 saw the National Plan of Action for Children which provided a roadmap for the realization of the Charter. In 2013, the second National Policy for Children was promulgated with four core areas of child development - Survival, Health and Nutrition, Education and Development, Protection and Participation^{xii}. The National Plan of Action for Children 2016 outlined strategies in each of these core areas, to achieve the said objectives^{xiii}.

In all these efforts towards enabling the rights of children both national and international, the Indian Parliament, as the highest representative institution of the country, has given appropriate lead and guidance to the government. However despite the constitutional assurances of rights, children in India

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continue to suffer from poverty, malnutrition, homelessness, abuse, preventable diseases, and unequal access to education and justice systems that do not often take into cognizance their special needs. The multiple forms of deprivation that children in India face is evident from the following:

- *India is home to 115.5 million children who live in extreme poverty^{xiv}*
- *37 out of every 1000 children die each year.^{xv}*
- *India has an adverse child sex ratio of 940 girls per 1000 boys.^{xvi}*
- *Less than half of India's children between in Class 5 can read a Class 2 text^{xvii}*
- *Almost 60 % of children under the age of 5 are malnourished^{xviii}*
- *Almost 90 % (80%) of childhood deaths are from diarrhoea^{xix}*
- *3 out of 10 children are not fully immunized^{xx}*
- *India is home to more than 10 million child labourers^{xxi}*
- *350 crimes were committed everyday against children in 2017^{xxii}*

When we juxtapose and dichotomize the situation of children in India with the country's stated commitment, we see an ostensible gap between the nation's promise of child rights and the reality of their continuing denial. We see a 'deficit in childhood' (Sinha, 2009)^{xxiii}, a deficit caused by the failure of the state to reach every child.

This gaping change deficit in childhood implies the political leadership in India has been unsuccessful in according due priority to child rights. My paper highlights how child rights commands a central space in the contemporary political dialogue in India and as the fulcrum of Indian democracy the onus rests on the Parliament. Some may argue that like all citizens' children rightfully deserve a Parliament sensitive to their rights, but why should the Parliament accord children precedence? The answer to this question stems from the unique position that children occupy in the socio-political structure. The development of children and participation are central to the future of any society. Children begin their lives solely dependent on adults; during this developmental stage, they are vulnerable to the actions and inactions of adults and government.

They are disproportionately defenceless in the face of poverty, hunger, malnutrition, etc. At the same time, almost every government policy impacts children directly or indirectly with many being significantly child-centred such as education, nutrition and health. However, unlike any other social

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group, children cannot directly influence this interface with the state as they do not constitute a political constituency and cannot directly participate in the democratic political process. It is in this light that the child deserves special attention of the Parliament.

When we try to understand the role of Parliament in context to child rights, it is helpful to analyse the position through Amartya Sen's (2007)^{xxiv} argument about agency in freedom. Sen hypnotised that the idea of freedom is not necessarily always contingent on the person taking control of the actual exercise of his/her freedom and there are many freedoms that depend on the actions of others and the nature of social arrangements. This articulation, clearly explains the potential of the Parliament in promoting child rights. Children provide the ideal case to apply Sen's 'Opportunity aspect of freedom' which largely lies in the domain of public policy, as the opportunities that the children have or will have are determined by public policy. The Indian Parliament is the key institution from where public policy emanates and where it gets deliberated upon.

Construction of childhood

To examine the role of the Parliament vis-à-vis child rights it's important to trace the ongoing national construction of childhood. An analysis of parliamentary debates surrounding the adoption of key policy documents since Independence, provides a sketch of the evolving national vision of the 'child', the accompanying national discourse and the policy provisions that emanate from it.

Our Constitution lays down the basic ideological framework to ensure a secure childhood. An overview of the Constituent Assembly debates lends the impression of 'invisibility' of the child as references to children are rare. However a closer look at the debates surrounding certain articles especially those pertaining to Fundamental Rights and Directive Principles reflects a deep concern for the well-being of the child. One of the most illustrative examples is pertaining to protection of children including the categorical ban on child labour. The debates^{xxv} specifically surrounding Article 18 in the draft Constitution, points to the consensus amongst the members on prohibiting child labour in hazardous employment, as a fundamental right. Though child labour was not problematized in the larger context of violation of the child's right to development especially education. However reading this article in conjunction with debates^{xxvi} surrounding Article 36 of the draft constitution which declared - 'The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years', clearly

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points to the fact that a direct correlation was envisioned between ending child labour and establishing compulsory education. The words of Dr. B.R. Ambedkar while responding to a proposed amendment best capture this, “The objective of Article 36 is not restricted to free primary education. If my honourable friend, Mr. Naziruddin Ahmad had referred to Article 18, which forms part of the fundamental rights, he would have noticed that a provision is made in Article 18 to forbid any child being employed below the age of 14. Obviously, if the child is not to be employed below the age of 14, the child must be kept occupied in some educational institution”^{xxvii}.

The National Policy on Children adopted in 1976, is another important landmark which marks a shift from ‘child welfare’ to ‘child development’ in national planning. However, here it’s important to highlight that the disjunctions between the Parliamentary discussions^{xxviii} that preceded the adoption of the National Policy on children and policy vision. The parliamentary discussions illustrate how a most members who supported the resolution viewed the issue of the child from a welfare perspective and the child as a subject of compassion; a significant divergence from the policy objectives which called for a marked shift towards a development perspective. The recommendations of the Ganga Saran Sinha Committee Report^{xxix}, which laid the ground for the National Policy, emphasised the necessity of a unified view of needs of the child. However the debates reflect that the issue of children continued to be viewed in a narrow sector specific manner. There is a conspicuous lack of linkage with several other National Policies which have a direct bearing on children such as on population, health and education^{xxx}. Further the National Policy lacked an operative part, a mechanism to ensure implementation and commitment to requisite financial allocations. Lacunae highlighted by several members, while the policy was being considered in the Lok Sabha^{xxxi}. This highlights the divergence between precept and practice.

The Five year Plans encapsulate the evolving vision of the child. They reflect India’s journey from a needs based welfare orientation seen in the initial decades after independence to a discernible rights based perspective. However, though the plans embody a progressive orientation, the child is viewed within the confines of certain areas believed to be specific to children who limit the scope and impact of the programmes. Other than the 11th Five-year plan the issue of children is largely seen as being supplementary to the gender component. A clear negation of a child rights approach is reflected in the compartmentalized view of the child adopted by the planners. The concerns of children are addressed in a segmented manner under the heads of nutrition, health, education and protection. While plan objectives

over the last decade list convergence of services for children as one of the main aims, the plans fail to chart out the multi sectoral linkages, for example between child development and child protection programmes. Further the child right to participation has been systematically eliminated from the ambit of child rights in the planning process. The larger structural issues relating to children are rarely addressed in the plan documents- for example child poverty which is the chief causal factor for low education, health and nutrition among children finds no mention in any of the plans. In a similar vein while there are several allusions to the problems of child mortality and malnutrition, the focus of policies and programmes is on supplementary nutrition rather than child rights to food and nutrition. A key indicator of the low priority accorded by the planners to children is reflected in the lack of resource allocations for child programmes. While the approach papers of the plans make several claims for children it's seldom translated into adequate monetary support and the child having first call on resources. An overview of the planning process highlights the excessive focus on devising policy formulations, rather than non-discriminatory and accountable delivery systems for the realisation of child rights, testifying that we are still in a stage of transition - somewhere between viewing children as passive beneficiaries and regarding them as citizens with rights.

Parliamentary Mechanisms to Ensure Accountability to the Child

As the nation's highest representative body, the Parliament plays a key role in actualizing the nation's stated commitment to children by ensuring state accountability in all aspects i.e. budgetary, in legislative and developmentally. To understand this it is important to understand the manner in which the elected representatives have utilized the forum provided by the Parliament to monitor the formulation of policies and programmes vis-à-vis children in India, their budgeting and implementation by the Executive. How are children's rights positioned and mainstreamed in Indian parliamentary agenda in terms of allocations for children in the Budget, the quantum of questions raised on children during the Question Hour and a synoptic analysis of certain child-specific and non-child-specific legislations.

Parliamentary control over public finances is the keystone of Executive accountability to the Legislature and hence an important index to ascertain the commitment of Members of Parliament towards prioritizing child rights. An analysis of the Union Budget in terms of the allocations for children shows that the average expenditure on children during the life of the 14th Lok Sabha (2004-05 to 2008-09) was a mere 4.18% of the total Union Budget, a trend which has continued in 2009-10 Budget with the share of the

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Child Budget remaining almost stagnant at 4.15% of the Union Budget. In the 15th Lok Sabha (2009-10 to 2014-15) there was a slight increase on child expenditure hovering around 4.5 % to 4.7 %. However in 2015-16 there was a steep decline to 3.26 % after which there has no significant increase throughout the 16th Lok Sabha. In the current financial year i.e. 17th Lok Sabha, the expenditure on children has further dipped to 3.25^{xxxii} % of the budget.

If we consider the above Child Budget in light of two significant facts - firstly children constitute almost 39%^{xxxiii} of the population and foundational investments in children are crucial for the country's development; secondly several outcome indicators point to the disadvantaged status of the child in India - a logical conclusion is that the allocations earmarked for children are grossly inadequate. A categorisation of expenditure on children into the four predominant heads - child development, child education, child health and child protection- reveals a skewed prioritisation, an excessive focus on education and a perennial neglect of the others. In this year's budget alone, almost 70 % of the expenditure allocation for children is devoted to child education. Child health is allocated a measly 0.4 % of the whole budget while child protection fares even worse, at 0.16 %.^{xxxiv} The attention accorded to Child Development, Child Protection and Child Health in the stated policy objectives has not translated into any noticeable corresponding budgetary allocations.

Though undoubtedly we have several achievements to our credit - decadal analysis attests to laudable achievements, especially the adoption of 'Child Budgeting' in 2008-09, steady rise in allocations, particularly for elementary education and an overall four-fold increase in allocations since the 1990's - we have a long way to go. In 2014, the Commission on Rights of Child, United Nation Commission on Human Rights had pointed out the low allocation to child expenditure and recommended an increase^{xxxv}. This points to a significant divergence between the vision that National Plan/ policy documents envisage and practise, a divergence which can be systematically moderated and checked through parliamentary mechanisms, yet awaits effective political intervention.

Parliamentary Discussion in Question Hour

One of the important bulwarks of Executive accountability to the Legislature is the Question Hour. The Question Hour not only enables MPs to question the Executive but also gives the Executive an opportunity to gauge popular sentiment and remain in touch with the people. A quantitative analysis of the number of questions raised on issues relating to children during the 14th Lok Sabha provides an

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insight into the level of interest amongst parliamentarians on child issues. It allows us explore to what extent have the MPs raised their voice to further the cause of the child, sought attention of the Executive and ensured appraisal of its performance. An analysis of the 14th Lok Sabha reveals that between 2004 and 2008, the average percentage of child focused questions was as low as 3.12% of the total number of questions asked. However, the heartening trend that has emerged is the rise in percentage of child focussed questions in the last two years, i.e. 2007-08 and 2008-09. The House-wise breakup shows that the Rajya Sabha (other than in 2008) takes a clear lead in raising child focussed questions as opposed to the Lok Sabha. If we categorize the questions raised in the Parliament under the four broad heads of - Child Development, Child Health, Child Education and Child Protection, we find that in the 14th Lok Sabha, the maximum attention was given to child education while child health and child development received much less attention. An increasing number of questions were raised on Child Protection in 2007-08 and 2008-09 substantially increasing its tally. If one correlates this with the skewed sectoral preference indicated in the Budget, it clearly attests that child health, early childhood care and development and child protection are amongst the neglected areas.

The trend continues in the 15th Lok Sabha with the number of questions related to child rights amounting to 3.5% of the total number of questions in both the houses in 2012. Out of a total of 14, 025 questions in both the houses of the Parliament the number of questions which were child centric stood at 265 and 320 in the Lok Sabha and Rajya Sabha respectively^{xxxvi}. In 2014, there was a marginal increase in child centric questions to 3.8 % of the total number of questions, and a similar focus on Child Education amongst all the questions. In fact, questions on Child Education accounted for 48 % of all questions related to children^{xxxvii}. Within Education, the questions focused on quality education mid-day meals and implementation of RTE amongst other topics.

In the 16th Lok Sabha, there was a visible increase in child focussed questions amounting to almost 5.9 % in the first year i.e. 2015. This trend continued in 2016, with almost 5.1 % of questions raised in the Parliament being child centric. However there was a noticeable dip in 2017-18 when only 3.3 % questions in the Parliament were focused on children. In all the years, child education continued to occupy the principal position while other core issues of Child Health, Protection and Development languished in the shadows. The latest figures of 2018-19, showcase a somewhat renewed focus on child specific issues,

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with 4.3 % of questions focused on children raised in the Parliament. Education continued to be the focus of questions, with questions focussed on Child Protection also increasing^{xxxviii}.

Further contextualising the above findings with the fact that issues affecting children's lives are largely absent from political parties' pre-election agenda, we realise that parliamentarians continue to accord low political priority to the subject even after being elected. Children's issues command peripheral political attention, and when questions are raised they are generally in response to tragedies largely confined to MPs' constituencies or States and not in the larger national context.

Legislation

Legislation is one of the key functions which define the role of the Parliament. The Indian Parliament has played a proactive role in passing several 'child laws'. In fact, through legislative action, the Parliament has been responsible for a definitive transition from addressing children's issues as a matter of charity to a matter of justiciable, deliverable entitlement. This section of the paper explores the legislative role of the Parliament by examining the debates and provisions surrounding two child-specific laws, namely 'The Prohibition of Child Marriage Act, 2006' and 'The Child Labour (Prohibition and Regulation) Act, 1986'' through a child rights lens and its potential role in incorporating a child rights perspective in general laws.

Child Specific Legislation

An analysis of the historical trajectory of the child-specific Acts reflects the manner in which the Parliament has acted as a vehicle of social engineering. A close scrutiny of the debates in both the Houses which surrounded the adoption of these legislations attests to the intellectual vibrancy in the Indian Parliament and highlights the extent to which opinion has been mobilized on the question of child rights. The rising socio-political consciousness on child rights is best represented by the discussions in the Parliament on the Right to Free and Compulsory Education whose origin can be traced back to 1911 when leading Nationalist Gopal Krishna Gokhale unsuccessfully urged the British to introduce compulsory, universal elementary education through a private bill in the Central Legislature. Then came the incorporation of the nation's commitment to universal, primary education as a Directive Principle in Article 45 of the Constitution, the 86th Constitutional Amendment which made free and compulsory education to all children between 6 and 14 years a fundamental right and eventually the unanimous

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enactment of the landmark 'The Right to Free and Compulsory Education Act' in 2009 which guarantees one of the basic Child Rights.

Similarly the legislative history of child marriage echoes the voyage of the nation from an era when several members supported the practice of child marriage in the name of preserving traditional customs to an almost universal acknowledgement among the parliamentarians on its prohibition. The Child Marriage Restraint Act, 1929, popularly termed as the Sarda Act, was one of the oldest child specific laws, a legal recognition of the fact that children should not be married before they are physically and mentally ready for it. It was enacted to restrain solemnization of child marriages i.e. a marriage of a male person if he was under 18 years and a female person if she was under 14 years of age. Subsequently, the age limit for female was raised to 15 years by an amendment bill in the Constituent Assembly. A strange contradiction that characterized the law was that it rendered child marriages illegal but not void. This was a weak legislation which could not achieve the desired results^{xxxix}.

The Child Marriage Restraint Amendment Act 1978 was passed after much discussion in both houses of the Parliament. It provided more teeth to the Act and raised the minimum age of marriage by 3 years (18 years for girls and 21 years for boys). The discussions around the Act reflect that though this law was specific to children, the amendment was largely guided by the motive of population control, while eradication of the 'social evil of child marriage' was secondary. Thus despite being a so called child law it cannot be termed as child centered. In 2004, the Prevention of Child Marriage Bill was introduced in the Rajya Sabha and referred to the Departmentally Related Parliamentary Standing Committee on Personnel, Public Grievances, and Law & Justice. With the passage of time, the Parliamentarian's stance on issues and rights pertaining to children witnessed a significant degree of maturity. Several MP's especially women members including those in the opposition parties supported the Bill and expressed their appreciation for provisions such as age stipulation, provisions for stringent punishment, involving the PRI members in the implementation process, dealing with mass child marriages etc. There were several others who linked child marriage with the lows status accorded to girl child in Indian society. The discussions indicate that there was a large consensus among the members on the Bill. It was unanimously passed in the Lok Sabha on in December 2006 and enacted in 2007

The present act contains several forward provisions: prohibition rather than prevention of child marriage, provision of relief to victims and enhanced punishment for all those who have actively abetted and

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solemnized the marriage. However it is widely felt that concerns relating to child abuse have not been adequately addressed^{xl}. The present law does not invalidate a marriage below a certain age. Thus a child of 10, 11, 12 or 13 years of age can be married and subjected to sexual and other forms of abuse. Therefore there is no provision in the law to stop a child bride from living with her husband and from being sexually abused. The act makes no provision for Compulsory registration of marriages for all communities which is a concrete measure to prevent child marriages.

Most of the limitations in the legislation were foreseen and highlighted by the DRSC on Personnel, Public Grievances, and Law & Justice^{xli}. However these were not incorporated in the Act or discussed in the Lok Sabha. This provides a microscopic example of some of the limitations in functioning of the present Parliamentary Committee System. While they are designed to lead the way in legislative matters for the whole Parliament and despite their effective functioning, the Committee reports have had limited impact on the quality and production of the legislation. In fact as in the case of the above report, some of the tabled reports are not paid due cognizance in the Parliament, which explains the significant divergence between the Committee Recommendations, the Parliament deliberations and the nature of the subsequent legislation.

Legislative Response to Child Labour

An analysis of the Parliamentary debates and Committee reports towards the Child Labour (Prohibition and Regulation) Acts portray a similar phenomenon. Portions of the Parliamentary debates showcase keen insight on the part of legislators combined with the astute observations in the Report of the Standing Committee on Labour and Welfare. The first comprehensive Act to make an attempt to put an end to Child Labour was The Child Labour (Prohibition and Regulation) Act, 1986. The key features included: defining a child as a person who has not completed 14 years of age, prohibiting employment of children in specified 'hazardous' occupations and processes, regulating the working conditions in occupations where children were not prohibited from working and laid down penalties for violation. Conceived as the first comprehensive legislation to deal with Child labour in uniform manner and actualize Article 24 of the Constitution which stipulates that children below the age of 14 years should not be employed in any factory, mine or hazardous employment, the Child Labour (Prohibition and Regulation) Bill was deliberated upon extensively in both houses of the Parliament.

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In his opening remarks Shri P.A. Sangma, the then Minister of State of the Ministry of Labour pointed out the vicious link between poverty and child labour, summarizing the since poverty forces the children of poor families to take up employment “ it would neither be desirable nor possible to impose a total ban on child labour”^{xlii}. Therein lies the argument of the vicious circle of poverty, whereby poverty does lead to child labour but child labour ensures poverty in perpetuity for all the children involved. Several members of Lok Sabha and Rajya Sabha across party lines raised the above argument in Parliamentary discussions^{xliii}. Many members criticized the distinction between hazardous and non-hazardous and called for complete ban on child labour.

Giving heed to the voices of critique, the Report of the Standing Committee on Labour and Welfare, 1993-94 submitted similar recommendations. Based on interactions with the specialists, academicians, and Ministry officials, the standing committee submitted a strongly worded report which raised a question mark on the performance of the Executive^{xliv}. In light of the imbalance between prosecutions and convictions under the Act i.e. few convictions despite several prosecutions, the Committee called for an amendment in the act so that it prescribes stringent punishment for the employers violating the act. The recommendations made by the Standing Committee highlight the real issues behind implementation of the Child Labour Law and made a very laudable attempt to put forth a multipronged strategy to mitigate child labour. The Action Taken Report^{xlv} to this report came out one-and-a-half years later in 1995. Out of the seven recommendations made in the Report, five recommendations i.e. 71.42% were accepted by the Government.

As highlighted in the debates surrounding the inception of the Child Labour (Prohibition and Regulation) Act and the subsequent standing committee report, the law has very limited scope. It covers only the organized sector where only 8% of the children work and is applicable to only certain industry based and hazardous occupations and processes. One of the biggest shortcomings of the Acts is that despite being a child specific law, the law does not recognize the child as an individual being. Instead the focus is on the establishment, administration and procedures^{xlvi}. This basic lack of understanding leads to gaps in implementation. A germinal problem in implementation is the discrepancy between the Child Labour (Prohibition and Regulation) Act which defines a child as up to the age of 14 years and the Juvenile Justice Care and Protection Act, 2002 which defines a child as up to the age of 18 years. The Juvenile Justice Care and Protection Act includes working children under the list of those who need care and

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protection. Thus while children are allowed to work beyond 14 years under the child labour laws, they are included under the list of children needing protection from economic exploitation under the Juvenile Justice laws. Another major criticism of the law is that while it bans child labour in certain occupations it does not provide any details as to how will the ban in hazardous occupations be implemented.

While this critique were pointed out by Civil society and academics in the earlier days of the law the Standing Committee report on Labour submitted its report on the Child Labour (Prohibition and Regulation) Amendment Bill 2012 in 2013. The report cited some of the often repeated criticism pertaining to widening of hazardous processes to include all occupations which would jeopardize the health of Adolescents (14-18 years, as recognized by Child Labour Laws). The Committee also pointed out that the allowing children to be employed in family occupations would not be conducive to the purpose of prevention of child labour as it would be difficult to keep track of children in such situations^{xlvii}. However, these standard committee recommendations were not addressed in the Bill. The Child Labour (Prohibition and Regulation) Amendment Act was passed in July 2016, which prohibited child labour for children up to 14 years, except in the case of family establishments. As per the Act, adolescents defined as children in the age group of 14-18 years, are allowed to be occupied in non-hazardous occupations and processes. As evident, the most recent legislation on Child Labour still stands at odds with the definition of children found in other Acts like the Juvenile Justice (Care and Protection of Children) Act 2015.

Today, we stand at a standstill. While civil society, academics and even Committee reports have often critiqued the loopholes in Child Labour laws, they have not been addressed by the Acts. Unless the true causes of child labour i.e. lack of education, inequality, poverty, implementation hurdles are addressed in the Parliament the seminal acts dealing with child rights will continue to suffer from loopholes.

Non-Child specific Acts

An analysis of two non-child specific acts namely the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 and the Rehabilitation and Resettlement Bill, 2007 indicates the inherent mechanisms within our legislature to constantly reinvent and update itself, keeping in tune with the changing national and international policy discourse (in this case on children). An analysis of non-child specific Acts is also important as actualization of child rights is a multi-sectoral approach and cannot be consigned to a branch/ministry or department of the Executive.

The National Rural Employment Guarantee Act, rechristened the Mahatma Gandhi Rural Employment Guarantee Act was enacted by the Parliament in 2005. Though seemingly this Act has no correlation with children it has a huge bearing on attainment of child rights especially in rural India. The scheme provides a legal guarantee for 100-150 days of employment in every financial year to adult members of any rural household willing to do public work-related unskilled manual work at the statutory minimum wage. Since deprivation of child rights is directly related with poverty, 100-150 days of guaranteed employment ensures that parents will be able to earn more to the extent of INR 6, 000 to INR 10,000 per annum, with which they can afford a better life for their children^{xlviii}. Further the legislation contains the provision for building of crèche facilities for children of mothers who perform unskilled manual work under the Act. Though this is a positive provision and indicates a gender and child sensitivity, social audits reveal that this was rarely implemented. Audits indicate that worksite facilities are almost non-existent.

Rehabilitation and resettlement Bill, 2007 was passed by the Lok Sabha. It accords no recognition to children except that educational institutions should be a part of the social impact assessment and lists orphans in the list of vulnerable persons. While overtly a rehabilitation law may not seem to be related with children, however if we take into the damaging impact of displacement on a child's development, the need to include special provisions for children becomes evident. In a letter to Raghuvansh Prasad the minister for rural development, National Commission for the Protection of Child Rights chairperson Shantha Sinha had pointed out that a review of the status of children in areas of displacements due to development programmes as well as disasters and conflicts, shows that most rehabilitation programmes do not take into account the impact of such massive deprivation on children^{xlix}.

The above section clearly highlights the real and potential role that Parliament can play protecting children by virtue of its legislative powers. Though legislation in itself can never be the complete solution, they set standards for aspirations of the nation, for its people and become indispensable tools for the defenders of rights. If there is no law an important space for contestation of power is lost to the weak.

Perception of Parliamentarians²

Interactions with the Members of Parliament of the 14th Lok Sabha, reflected a wide consensus and unanimity on the question of Parliament's role in promoting child rights, highlighting the rising awareness amongst parliamentarians on the issue. Most of the MPs agreed that not only does the Parliament have the potential to become the torchbearer in this regard but it is the primary responsibility of the institution. Several MPs cited personal examples to indicate the manner in which procedurally, the Parliament offered tremendous scope to ensure accountability and voice the concerns of children.

Ironically, while most MPs pointed to its relevance, several of them candidly talked about the 'real problems' they face in prioritizing issues relating to children, irrespective of personal interest and inclination. Several MP's who cited lack of political will as the chief reason for the Parliament not being able to fulfil its mandate to the children of the country. As Marxist leader Brinda Karat pointed out, "The two primary causes for this (lack of due importance to women and children in parliamentary debate and the budget) are a lack of political will and misinterpretation of what constitutes inclusive growth. I think this is largely on account of the fact that these groups do not constitute significant vote banks. Children have no vote. Women do not tend to vote for candidates who promote their cause but for those who the rest of the family votes for". However some Legislators provided for an intricate viewpoint. Emphasizing the need to take a realistic view senior leader (who later went on to become Speaker in the 15th Lok Sabha), Shrimati Sumitra Mahajan said "I feel making a blanket statement that there is no political will is false. Parliamentarians like others have multidimensional interests, where do children figure on this agenda differs from MP to MP. Personally I feel, political will is there but in terms of priority, this issue is given low political weightage... that is largely because in popular perception children are generally bracketed in the category of social issues whereas the general understanding is that foreign policy, electoral reforms, price rise etc. are in the domain of political issues". Several MPs perceived promotion of child rights as contingent on 'compassion', 'humanity', 'morality', rather than a rights based perspective.

² This section is based on interviews conducted with MPs of the 14th Lok Sabha (2004-2009)

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Taking a highly critical stand, some MPs pointed to the lack of a national vision and a comprehensive national policy on children grounded in the contemporary socio-economic and political reality. Veteran leader Hukumdev Narayan Yadav stated that “...In the absence of a comprehensive national policy which clearly outlines the national vision vis-à-vis children talking about child rights was making a mockery of it... A policy that takes into account the present condition is an essential prerequisite for MP’s to implement any programme or frame a law, as that provides a foundation”. Independent MP Dr. Tarun Mondal talked about the manner in which – “child development schemes were largely targeted at providing piecemeal relief rather than promoting child rights due to the absence of an inclusive integrated policy on the basis of which the state could be held accountable and government would be bound to deliver”. Others argued that structural factors were largely responsible for the worsening of national indicators for children and several MPs talked about the limitations of ameliorative programmes in the absence of attempts to address the structural causes.

These divergences of opinion, while healthy in the Parliament point to a certain fallacy in the approach towards child development. There is a visible sense of ambiguity about the status of the child both in terms of political legitimacy as well as a developmental issue. This fluctuating importance with respect to the interface between the Parliament and child rights is reflected right through the different dimensions the paper has sought to explore: the gap between policy commitments and worsening indicators for children; the divergence between different milestones that mark the ongoing national discourse and construct of childhood; a marked shift towards rights-based language in law, policy and programming but limited reflection in budget allocations; questions seeking Executive accountability and non-child specific legislations; and the perception of MPs on the Parliament’s role in promoting child rights and the impediments to it.

While we have progressively tried to move towards a rights-based approach, enshrined in our Constitution and reflected in national and international forums, the political leadership at the helm of affairs tends to oscillate between guaranteeing children their rights and viewing children as a benign social category far removed from politics. The seemingly natural way of considering childhood as synonymous with innocence, often leads to the adoption of a compassionate and welfare centric approach thereby delegitimizing claims for human rights of children as citizens. Child rights is viewed as a subject limited to the ‘poor suffering child’, the worst victims of poverty, trafficking, homelessness, hunger,

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abuse; dispossessed of education , health and therefore requiring protection of the State. Such an approach highlights the suffering of the child and hence the need for compassion but it serves to deny children an opportunity to be recognized as citizens. Thus, while a visible consensus on child rights is undoubtedly a laudable achievement it obscures the low level of political legitimacy that children enjoy. In this light, the essential starting point is an understanding and consequent acknowledgement of the fact that political legitimacy to children can never be achieved without a rights based perspective, programmes without incorporation of a rights-based perspective would be bereft of implementation mechanisms which ensure these rights.

Way Forward

Going back to Amartya Sen's (2007) 'Opportunity Aspect of Freedom', the India Parliament has the responsibility to create effective opportunities for children so that they can exercise them to their full capabilities. In the Indian context, the Parliament is not only responsible for creating these opportunities but also enabling children to fully develop their capabilities to take advantage of them. For the full realization of these responsibilities, the Parliament can play an instrumental role that can elevate 'child rights' to the status of a 'national concern'. The first step is recognizing the importance of child rights and in light of the vulnerable status of children in India, placing it at the heart of government policy. As a catalyst for change and an important stakeholder in the decision making process itself, if the Parliament accords priority to child rights it will definitely be able to get its rightful place on the national agenda.

Towards this end, it may be suggested that Parliament utilizes every forum, mechanism and procedural device available to it - be it the Question Hour, Calling Attention, Discussions, Budgetary deliberations, etc. - to promote the rights of children and help create awareness of what it means to respect children's rights. Parliamentarians can lead and alter attitudes simply by asking probing questions and demanding answers; a conscious and consistent effort by parliamentarians to highlight the violations of rights that children in India face will ensure that it gains greater visibility and is accorded political priority. In this light the suggestion that emerged from the MPs regarding instituting a half an hour discussion in each Session solely devoted to child rights, can prove to be a concrete parliamentary intervention to generate and diffuse knowledge on this question.

As the lawmaker of the country, the Parliament has limitless power to effect crucial changes. Laws set standards for aspirations of the nation and become tools for the defenders of rights. If there is no law an

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important space for contestation of power is lost to the weak. Through the mechanism of legislations, the Parliament can steer executive action and mainstream child rights as a core indicator in national development. In this regard, the present Committee system offers many opportunities due to its technical expertise, engagement with diverse specialists and ability to foster cross-party political consensus. However for these opportunities to be realized, it is imperative to strengthen the present Committee System. As illustrated through the analysis of the child-specific laws, often the recommendations of the Committees are simply overlooked, despite the merit, and even when seemingly a large percentage of the recommendations are accepted some of the substantial ones are disregarded. Given the advisory nature of the Committees, they cannot compel the government to accept the recommendations but it may be suggested that when a committee highlights several loopholes in legislation, wider parliamentary consultation on the adoption or continuance of the law in present form may be sought.

A tangible recommendation that emerged from various quarters, including the MPs, was creating effective institutional structures within the Parliament singularly devoted to the cause of the child. One of the suggested institutional mechanisms was establishing a specific Committee on Children; the establishment of such a Committee with terms of reference similar to those of the Committee on Empowerment of Women would go a long way in addressing the problems of invisibility of children in budgeting, inefficient use of resources, inept auditing of child specific schemes, lack of a child perspective in legislations, inadequate inter-departmental cooperation and insufficient information on specific child issues of national relevance. An additional task that may be assigned to the Committee could be to oversee and review the overall government strategy for children and ensure its consonance with the Constitution and the UNCRC.

Another proposed structure was instituting a Parliamentarians Working Group on Children which includes members across party lines and make them accountable and activists in favour of children's rights. Such a cross-party alliance on children would help in mainstreaming the cause of child rights within parliamentary practice irrespective of the Government at the Centre. This forum would function like an active lobby of parliamentarians within the Parliament which consistently promotes child rights, takes up the cause of children with other parliamentarians and coordinates with various forums such as the Standing Committees and other Consultative Committees to enable substantive and effective action. In this regard it is important to point out that the existing Parliamentary Forum on Children, constituted

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during the 14th Lok Sabha in 2006, has already laid a foundation for such an initiative. While the present Parliamentary Forum on Children undoubtedly performs the critical function of creating a platform for broad based dialogue and discussion, a necessary two-way engagement to create awareness and acceptability on child rights within and outside the Parliament.

Civil Society has been active in this regard, with UNICEF constituting a Parliamentary Group for Children (PGC) in 2013. The PGC was constituted in the year with 55 members, and it has continued to grow since that time. It consists of members from across all parties. It offers a platform for Parliamentarians of the country to meet across party lines and discuss solutions to the pressing problems affecting the development of children. The consortium focuses on discussing on multiple aspects of child development from Health, Protection, and Education to Sanitation and Waste Management. It also facilitates access of legislators to Academics and civil society activists who work extensively on issues pertaining to the child. The cross party nature of PGC along with exposure to experts in the field make the PGC model worth exploring, for a proposed Committee on Children operating within the auspices of Parliament.

Similar initiatives from across the globe - such as Lebanon (High level and highly effective Committee on the Rights of Children), Italy (Parliamentary Commission leading to National Plan of Action and Ombudsman for children), France (Parliamentary Investigative Commission on the Children), Germany (Children's Commission of the Bundestag), Brazil and Sweden (Parliamentary Committee on Children with representation from all other Commissions) and Sri Lanka (Parliamentary Lobby for Child Rights) - reflect the important contributions that Parliamentary Commissions and Committees can make. This Parliamentarians Working Group on Children can also develop pilot mechanisms which create a platform for child participation (a virtually unexplored dimension in the present set-up) by providing a forum for the parliamentarians to directly engage with children, understand the manner in which children perceive socio-political reality, especially problems that affect them, interact with child representatives from different parts of the country, and connect with the 'Child Parliaments' that are in a nascent stage of development in many parts of the country. In this manner, this Parliamentarians Working Group on Children would provide an institutionalized opportunity for the political leadership to consult children and promote their role as active and responsible participants in the democratic process.

Conclusion

The present paper is essentially a starting point, a reflection on the manner in which the Indian Parliament has a unique opportunity to change the face of the tomorrow's India. Every right that the Parliament guarantees the children of India will strengthen the inclusive foundations of the country and invigorate its democratic traditions. The exercise of these rights will not only be fulfilled by stated commitments to child development, but also by utilizing the full spate of Parliamentary powers. These include increased Executive Accountability, move towards a child responsive budgeting, closing the gap between practice and percept and finally focusing on child rights in the most highly regarded public platform of the land i.e. Parliament, thereby impacting the discourse on child rights. While there have been commendable progress in terms of some legislation and key policy documents in forwarding the cause of child development, a rights-based approach has not been fully realized. This has been evident in the weak implementation and monitoring mechanism for a number of these laws and legislations. Parliamentarians, due to their unique position at the intersection of legislation and policy, are the most suitable and effective agents of development. While committed to the cause of child development, they hold a plethora of views on the issue of child rights. It would be conducive to both policy and discourse if legislators committed to the cause would assemble and mobilize their powers. Discourse and reflection in the form of Working Group of Children would not only improve policy implementation but support the development of a rights based approach to the development of Indian children.

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ⁱⁱ Ministry of Statistics and Programme Implementation. Central Statistics Office. Youth in India 2017. Accessed on 20/10/2019

ⁱⁱⁱ Promoting equality of opportunity for all citizens in matters of public employment

^{iv} Right to Equality

^v Prohibition of discrimination on grounds of only religion, caste, sex, place of birth, or any of them

^{vi} Right to life and due process of law

^{vii} National Centre on Education and the Economy. Indian Education Profile (2005)

- viii Sourced from the official education statistics put out by the Indian Ministry of Human Resource Development. Statistics available at. https://mhrd.gov.in/sites/upload_files/mhrd/files/statistics-new/ESAG-2018.pdf
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