

RIGHTS OF ADOLESCENT GIRLS IN INDIA: A CRITICAL LOOK AT LAWS AND POLICIES

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Girls make a presentation on their Rights at a function in their community

THE CONTEXT

India, as the world's biggest democracy with the second largest population of approximately 1.3 billion, hosts nearly 20 percent of the planet's population of adolescent girls.¹ While one in ten Indians is an adolescent girl, they remain an invisible group. Adolescent girls are often marginalized or even excluded from national laws and policies, their needs subsumed under those of children or women. The National Census 2011 projected 12.2 crore adolescents in India aged 15 to 19, consisting of 6.5 crore boys and 5.7 crore girls.² Further, it is estimated that at least 50 million women and girls are "missing" from India's population due to "discrimination leading to death" - gender bias in mortality caused by sex-selective abortions, female infanticide, and insufficient care given to girls.³ The World Health Organization defines "adolescence" as the age range of 10 to 19 years.⁴ Key attributes of adolescence, according to the WHO, include: rapid physical growth and development; varying levels of physical, social and psychological maturity; sexual maturity and sexual activity; experimentation; the development of adult mental processes and adult identity; and transition from total socio-economic dependence to relative independence.

¹ Saumya Uma, *The Rights of Adolescent Girls: A Critical Look at Laws and Policies*. 2012, Vacha Trust, Mumbai.

² Ray Kalyan, 'Govt to Give Iron, Folic Acid to 12 Crore Young Girls' *Deccan Herald*, 25 December 2011.

³ Amartya Kumar Sen, (1992), 'Missing Women', *British Medical Journal* 304: 586-7.

⁴ World Health Organization: Regional Office for Southeast Asia, http://www.searo.who.int/en/Section13/Section1245_4980.htm, accessed 20 May 2012.

In the Indian context, adolescence is a time when a boy's world expands, and a girl's world contracts. For boys, adolescence represents financial independence, expanded participation and enhanced status in family, community and public life. While a boy's world expands, a girl's world contracts upon entering adolescence. For girls, this period marks a growing dependence on natal and marital families, and restrictions on speech, expression, thought, mobility and conduct, etc. Adolescence confines girls to socially constructed gender roles of being wives and mothers. They are relegated to the home, excluded from public life, and remain absent in national laws and policies and the processes that shape their lives.

GIRLS COUNT TOO: WHY INDIA NEEDS LAWS AND POLICIES THAT WILL EMPOWER GIRLS

Adolescent girls in India face intersecting forms of discrimination on the basis of gender, age, class, caste, race, ethnicity, socio-economic status, and other factors that create specific obstacles that prevent them from experiencing their civil, political, social, economic, and cultural rights to the fullest. These obstacles must be addressed by legislators and policymakers, separately and equitably, with a full understanding of how laws, policies programmes, plans, budgets and schemes intended to empower women and girls translate to ground realities. This understanding must be gender-responsive and rights-based, to assess the effectiveness of national-level measures to promote gender equality.

India is also obligated to ensure that its country-level initiatives abide by its obligations under international law, including the United Nations core human rights treaties, especially the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the International Bill of Rights, which consists of the Universal Declaration of Human Rights (UDHR), and the two International Covenants on Civil and Political Rights (ICCPR), and Economic, Social and Cultural Rights (ICESCR). Other relevant international treaties include those by the International Labour Organization, especially the core labour Conventions and the Fundamental Principles and Rights at Work. India is also obligated under regional standards created by organizations of which it is a member such as the South Asian Association for Regional Cooperation (SAARC), such as the SAARC Convention against Trafficking in Women and Children (2002). These international and regional standards form a framework of complementary and mutually protections that uphold the rights of India's girls.

"Investing in adolescent girls is precisely the catalyst poor countries need to break intergenerational poverty and to create a better distribution of income. Investing in them is not only fair, it is a smart economic move."

Robert B. Soellick, Former President, World Bank

Investing in laws and policies that empower adolescent girls is not only the right thing to do. It also makes good business sense. Girls are the future of India's workforce, society, and economy. The work participate rate of women in India is much lower than that of men. From 1981 to 2001, women's participation in the workforce rose from 19.7 percent to 25.7 percent, while men's participation remained steady, decreasing only slightly fro 52.6 percent to 51.9 percent.⁵ The available economic data suggests that India loses USD 56 billion a year in potential earnings because of adolescent pregnancy, higher secondary school dropout rates, and joblessness among young girls.⁶

Empowering girls can break the cycle of poverty, result in public health benefits, and reduce costs to the state. The current female mortality rates in the age groups of 15-19 years, and 20-24 years, are substantially higher than those of males. This can be attributed to early marriages and health complications during pregnancy and childbirth, as well as entrenched gender discrimination that prevents effective responses to health needs of adolescent girls.⁷ Youth fertility accounts for more than half of the India's total fertility, with 44 percent of married women in the 15-19 age group having one or more children, many of who are both into extreme poverty.⁸ Adolescent girls, especially those living in poverty, also have high rates of malnutrition and anaemia, and are at heightened risk of being affected by HIV. Finally, at least 32 percent of married women aged 15-24 reported sexual violence and 25 percent reported physical violence, according to a study by the Population Council.⁹ Another study has shown that India has the highest rate of domestic violence among women married by 18, with a rate of 67 percent compared to 45 percent of women reporting not experiencing violence.¹⁰

The right to freedom from all forms of discrimination, including sex- and gender-based discrimination, which includes all forms of violence such as domestic violence, physical, psychological and emotional violence.	The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) – the definition of discrimination article 2 of CEDAW includes violence against women.
The right to education, including free and compulsory education for ages 6 to 14	The CRC.
Rights relating to health, such access to health services including sexual and reproductive health rights (SRH) and HIV/AIDS services, food security, nutrition, water and sanitation.	The International Covenant on Economic, Social and Cultural Rights (ICESCR) and CEDAW, which upholds sexual and reproductive health and other rights.
The right to free speech and freedom of expression.	The International Covenant on Civil and Political Rights (ICCPR).
Labour rights, including prohibitions of child labour and forced labour, minimum wages, equal pay for equal work, workplace health and safety , and the right to collective bargaining and to form and join unions.	The CRC, the ICESCR, and the core International Labour Organization (ILO) Conventions including the Fundamental Principles and rights at Work.
Age of marriage, agency in marriage, rights within marriage and rights upon termination of marriage.	CEDAW.
Land, housing, property and environment rights such as those addressing adequate housing, matrimonial property, land and forestry rights.	ICESCR. The Declaration on the Rights of Indigenous Peoples (DRIP) also outlines property and environmental rights for indigenous peoples.

TABLE 1. SPOTLIGHT ON SOME FUNDAMENTAL HUMAN RIGHTS OF ADOLESCENT GIRLS

RIGHT	PROTECTED BY:
The right to life	The Universal Declaration of Human Rights (UDHR).
The right to a healthy childhood.	The Convention on the Rights of Child (CRC).

⁵ *Rights of Adolescent Girls in India*, p. 18.

⁶ "India Economic Summit Champions Investing in Girls", 2 December 2009, The Huffington Post, http://gbcimpact.org/itcs_node_/2/4/news/2278, accessed 17 September 2012.

⁷ *Rights of Adolescent Girls in India*, p. 23.

⁸ *National Family Health Survey 3: 2005-2006*.

⁹ International Institute for Population Sciences (IIPS) and Population Council, 2010.

¹⁰ UNICEF (2005).

TABLE NO. 2. SPOTLIGHT ON SOME KEY POLICIES THAT IMPACT ADOLESCENT GIRLS IN INDIA

TITLE	HOW THE POLICY PROTECTS ADOLESCENT GIRLS
12th Five Year Plan (2012-2017 by) the National Planning Commission (which is	Focuses on vocational training and life skills education, mainstreaming gender into the policy and

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informed by the Working Group on Child Rights).

Five Year Strategic Plan (2011-2016) of the Ministry of Women and Child Development National Plan of Action for Children (2005)

National Charter for Children (2003)

Draft National Youth Policy (2001)

institutional framework, and extension of the Right of Children to Free and Compulsory Education Act to guarantee education of girls up to senior secondary level.

Aims to considerably reduce anaemia among girls and aims to empower adolescent girls through nutrition, health care and life skills education.

Objectives include promoting physical, mental, emotional and reproductive health among adolescents, sexuality and sexual responsibility, promotion of education including life skills, self-esteem and decision-making, protection from all forms of social, economic and sexual exploitation, violence and discrimination, and training opportunities to prepare them for sustainable livelihoods.

Includes specific on adolescents, and reflects the recognition by government of adolescents as a specific group with specific needs. It obliges the State and community to take all steps to provide the necessary education and skills to adolescent children to become economically productive citizens.

Unlike the National Policy for the Empowerment of Women (2001), this adequately addresses gender inequality and provides a comprehensive view of adolescents and their concerns.

A CRITICAL LOOK AT THE LAWS AND POLICIES THAT AFFECT ADOLESCENT GIRLS IN INDIA

The legal and policy framework addressing the rights of adolescent girls has undergone a shift in recent years, from a welfare-oriented approach to one that places adolescent girls' rights in the centrality of laws and policies. This framework provides the foundation for programmes, schemes and interventions to empower adolescent girls and to safeguard their human rights. The foundation of this framework is the Indian Constitution, a legal, political and moral document that guarantees and basic rights of all Indians, which are then elaborated in other laws. It also sets certain standards concerning women's rights and children's rights that apply to adolescent girls. These include equality before the law and equal protection under the law, and prohibition on discrimination on a number of grounds including sex, in spheres such as education and public employment. Affirmative action through special laws, schemes and provisions for women and children are also enshrined in the Constitution.¹¹ The key policies that are part of the framework to empower adolescent girls in India are outlined in Table No. 2, while the major laws are outlined below in Table No. 3.

In addition to the policies in the adjacent table, an important policy is the Rajiv Gandhi Scheme for the Empowerment of Adolescent Girls (RGSEAG), also known as the SABLA, launched by the Ministry of Women and Child Development (MWCD) in 2011. This scheme takes a multi-sector approach at empowering girls aged 11 to 18 by improving their nutrition and health, providing life skills education and supporting vocational training.¹² The MWCD also launched a Nutrition Programme for Adolescent Girls from 2005-6, which aims to improve the nutritional status of girls aged 11 and 18, including by providing food grains to undernourished girls identified by local *anganwadi* workers.¹³ Another targeted policy implemented by the central and state government of Haryana is the *Kishori Shakti Yojana*, where adolescent girls are trained on home-based and vocational skills, including measures like health hygiene, nutrition, home management, child care, and take all measures to facilitate marriage after 18 years of age or even later. Vacha recommends that such a policy should be enforced on a larger, nation-wide scale to make a meaningful and long-term impact on the economic empowerment of adolescent girls.¹⁴

Another law that contains progressive provisions is the Prohibition of Child Marriage Act (2006). This Act guarantees a child, i.e. anyone aged under 18 years the option to end the marriage at any time subsequent to the

¹¹ *Rights of Adolescent Girls in India*, p. 48-9.

¹² *Ibid*, p. 82.

¹³ *Ibid*, p. 153.

¹⁴ *Ibid*, pp. 132-3.

"I have not been to school. My girls should study. Education makes you clever. You do not have to give thumb impression instead of signature. I feel bad about having to stamp my thumb every time on a document. So many women go to work these days. Without education we cannot get good jobs."

"Shantabai", a mother, from Experiencing Girlhood: Stories from Bastis in Mumbai. Vacha, 2010.

marriage and before two years from attaining majority at the age of 20. Where girls do end marriages, the law also provides for their maintenance and residence until remarriage from the male contracting parties or their parents, as well as relevant custody orders for any children born from the marriage. All offences are cognizable and non-bailable under this law, and penalties for offences have been significantly enhanced to promote enforcement.¹⁵ A state-level Act that includes good practices to be replicated at the national level is the Goa Children’s Act 2003. This law is broadly worded, in concordance with the Trafficking Protocol, focuses on child trafficking both within India and across borders, and is not limited to trafficking for sex work or commercial sexual exploitation.¹⁶

Several major policies contain some important protections but are limited because they do not specifically address adolescent girls. These include, for instance, the National Policy for the Empowerment of Women (2001) which contains key protections for women including the elimination of discrimination and all forms of violence against women and girls, and the National Health Policy (2002), which attempts to educate school and college students on preventive health care, among other protections. Both of these subsume adolescent girls under the categories of “women” and “children”.

Additionally, there are several key laws that affect adolescent girls in India that Vacha recommends be amended. These include: the Right of Children to Free and Compulsory Education Act (RTE) (2009). The main features of the RTE, which safeguards free and compulsory education for children aged 6 to 14, are summarized in Table 3. To fully empower adolescent girls, the RTE should be changed to protect the right to education for children up to 18 years, which is the universally recognized definition of a child under the UN Convention on the Rights of the Child (CRC).¹⁷ A recently passed law is the Child & Adolescent Labour (Prohibition) Act (2012). This law proposes a complete ban on the employment of children under the age of 14 in all areas of work. Although children’s and adolescents’ rights advocates supported the law, they also warned that the amended law required political will, effective implementation, adequate budgets and robust enforcement to be fully enforced and impact the estimated 12.6 million under-14s working in India.¹⁸

ADOLESCENT GIRLS?	
The Right of Children to Free and Compulsory Education Act (2009) (RTE)	This law: provides free and compulsory education to all children in India aged 6 to 14 years. No child can be held back, expelled, or required to pass a board examination until the completion of elementary education, and that a child who has not completed elementary education has a right to receive special training, and would be entitled to free education until the completion of elementary education, even if it extends beyond 14 years of age.
The Prohibition of Child Marriage Act (2006)	One of the most powerful provisions in this law is that child marriages are voidable where the contracting party is a child at the time of marriage, as discussed earlier. Strong punishments include males over 18 years being imprisoned for up to 2 years or being fined lakh rupees, or both.
Child Labour (Prohibition and Regulation) Act 1986	This law prohibits child labour in hazardous occupations and regulates conditions of work in the non-hazardous zones. It was amended in 2006 to ban the employment of children aged under 14 even in non-hazardous industries such as hospitality (restaurants, hotels etc) and domestic work.
The Immoral Traffic (Prevention) Act (ITPA) (1956)	Sex work is legal where there is no third party involved, it is not done in or near a public place, it is not forced, where is no solicitation, or when a sex worker resides alone. This law is limited because it focuses only on abolishing trafficking for sex work and sexual exploitation, it fails to integrate rehabilitation with rescue of victims, it fails to expressly provide for the confiscation of traffickers’ assets, and it has no mandatory provisions on the role of NGOs.

TABLE NO. 3. SPOTLIGHT ON KEY LAWS THAT IMPACT ADOLESCENT GIRLS IN INDIA

TITLE	HOW DOES THE LAW PROTECT
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¹⁵ Ibid, p. 184.

¹⁶ Ibid, p. 235.

¹⁷ Ibid, p. 80.

¹⁸ ‘A move that could help reduce child labour’ *The Wall Street Journal*, 29 August 2012, cited in *ibid*, p. 117.