



HUMAN
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WATCH

BREAKING THE SILENCE

Child Sexual Abuse in India



Breaking the Silence

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Summary

The rape and murder of a student in New Delhi on December 16, 2012, followed by large public protests, has led to a great deal of soul searching about the problem of sexual violence in India. Politicians, lawyers, women's rights activists, and an independent government-appointed commission have all made proposals for new laws, police reform, and public education. The government has promised action. If nothing else happens, the case has awakened many Indians to the scale and prevalence of sexual violence in their country.

While great awareness has been raised about sexual violence against women in India, much less is known about the problem of sexual abuse of children. Studies suggest that more than 7,200 children, including infants, are raped every year; experts believe that many more cases go unreported. Expressing concern about violence against women after the New Delhi rape, Louis-Georges Arsenault, United Nations Children's Fund (UNICEF) representative to India, said that "too many of these cases are children."

Consider the case of Apna Ghar, a residential care facility for orphans and other vulnerable children in the northern Indian town of Rohtak in Haryana state. Conditions were so dire that at dawn on May 7, 2012, three teenage residents sneaked out through the front door after one of the girls stole the key to the door, along with 500 rupees, from the purse of the facility's director. It was all they needed to make their escape to New Delhi. The girls promised the friends they left behind that they were going to return with help.

That help came two days later, when members of the National Commission for the Protection of Child Rights (NCPCR) visited the facility to investigate the girls' allegations of abuse. The head of the team later described the scene they encountered there as "insane, unbelievable." Girls of all ages told them they had been made to have sex with strangers for money, that the son-in-law of the director had molested them, that they had been stripped naked, and beaten on their vaginas. Others said that staff had tied them up and suspended them from ceiling fans as punishment. "They made us do such disgusting things," one said. "I felt so dirty that even the water I drank afterwards tasted like it had been contaminated."

What is most shocking about the abuse is that it happened in a well-respected facility that was regularly inspected by government officials. Its director, Jaswanti Devi, had recently been named Haryana state's "woman role model of the year." Her charity ran 12 government-funded welfare projects. According to Vinod Tikoo of the NCPCR, the abuse in the institution revealed a massive breakdown. "It is not neglect. It is systemic failure," he told Human Rights Watch.

As recent research has shown, it is not just within institutions that Indian children suffer from sexual abuse. A 2007 Indian government-sponsored survey, based on interviews with 12,500 children in 13 different states, reported serious and widespread sexual abuse, thereby putting the government on notice about the gravity of the problem. Smaller surveys conducted by nongovernmental organizations (NGOs) have also painted a disturbing picture. Children are sexually abused by relatives at home, by people in their neighborhoods, at school, and in residential facilities for orphans and other at-risk children. Most such cases are not reported. Many are mistreated a second time by a criminal justice system that often does not want to hear or believe their accounts, or take serious action against perpetrators.

This report does not attempt a quantitative analysis of the scope of the problem in India. That has already been established by recent research conducted by the government and others, though more research is certainly needed. Instead, this report looks at a number of detailed case studies to examine what the government does to prevent abuse, how it responds when it receives allegations of abuse, and how it treats victims after they are abused. To prepare this report, we interviewed more than one hundred government officials, doctors, police officials, lawyers, members of nongovernmental organizations, and children. We spoke directly with eight victims of child sexual abuse and the relatives of another nine victims. We examined court papers and other documents. In accordance with Indian law, we have changed, or not revealed, the names of any of the victims and their relatives.

A wide swathe of authorities in India, including political leaders, bureaucrats, police, and judges, have publicly condemned the sexual abuse of children. Yet, poor awareness, social stigma, and negligence have facilitated the continued perpetuation of such crimes.

During our research we found that despite commitments to ensure the protection of children, the Indian government has failed to generate effective oversight mechanisms that could prevent much of the child sexual abuse from taking place. Additionally, existing child protection schemes, and many police departments, courts, local government administrations, children's institutional care facilities, schools, and doctors, are simply not doing enough to help victims after sexual abuse has been identified, or to ensure that perpetrators are punished.

A government appointed committee, in January, found that the government's child protection schemes, "have clearly failed to achieve their avowed objective." Set up by the government in December 2012 in the wake of the Delhi attack, the committee, headed by Justice J.S. Verma, made several recommendations to address sexual assault and expressed particular concern over the plight of children in residential care institutions.

To be sure there are significant hurdles to crafting effective responses to this still largely hidden problem. Fear of social stigma or lack of faith in government institutions prevents many people from reporting child sexual abuse. The 2007 government survey found that, among abused children, only 25 percent had told anyone, and only in 3 percent of the cases had the police been informed. As in many other countries, deep-rooted cultural norms discourage the open discussion of sex and make it hard for a child to complain about an older relative or a person in a position of authority. Writing in the introduction to the government survey, the then women and child development minister, Renuka Chowdhury, said that child sexual abuse in India, "is shrouded in secrecy and there is a conspiracy of silence around the entire subject."

Addressing child sexual abuse is a challenge all over the world. But in India, shortcomings in both state and community responses add to the problem. Victims who do come forward to make a complaint often suffer as a result. For instance, Ahmed told Human Rights Watch that his family found itself ostracized after his 12-year-old daughter said she was raped. She claims this happened after three men abducted her one afternoon as she was walking to her home in the northern city of Varanasi. Ahmed said that he decided to inform the police because many schoolgirls used the same street and he was afraid for their safety. But instead of winning the gratitude of his neighbors, they shunned him and his daughter because she was a rape victim. The parents of his elder daughter's fiancé cancelled the engagement because they felt that public knowledge of the attack had brought shame to their family. The

police discouraged him from registering a complaint and, apparently to avoid having to take action, even accused the family of lying. Ahmed told Human Rights Watch:

My daughter was continuously saying that she had been raped, but the police told us not to tell anyone. They told us to settle the case. When I refused, the police then grabbed me and slapped me several times. Three or four men did this to me, including the station officer. They also beat my son.

The fear of attracting social stigma can result in families trying to cover up the most horrific treatment of children. In a village in Uttar Pradesh state, the mother of a two-year-old girl walked in on her child being molested by a 17-year-old male second cousin. The parents of the girl wanted to file a case with the police, but were persuaded by the extended family as well as the police to settle the matter privately. Rather than having the perpetrator arrested, he was instead told to leave the village. “We know that a lot of abuse is happening but people don't talk about it,” said Anand Prakash, a local social activist. “It is all related to respect and the dignity of the family. If it comes out, the family will be disrespected.”

In recent years this “conspiracy of silence” has finally begun to break down, thanks to activists working on the rights of women and children, the small but growing number of NGOs that counsel survivors and raise awareness, and to the central government’s Ministry of Women and Child Development, which has taken a leadership role on the issue.

The criminal justice system, from the time police receive a complaint until trials are completed, needs urgent reform. One problem is the inconsistency in the way the system currently handles cases. Many victims and their families find the whole process extremely intimidating. Neha, for example, who is from a low-caste rural family, told Human Rights Watch that she was raped when she was 16 years old. The next day she put on her best clothes to look respectable and went to the police station. But the officer on duty simply made rude remarks about how nice she looked, suggested that she had consensual sex, and told her to go away. “The man on duty told me to shut my mouth and go back home,” Neha said. “I was so angry that I wanted to hit him. Why was he doubting me?”

Krishna, from Uttar Pradesh, says she was raped when she was 12 years old by a member of a politically influential family. When she complained to the police, she said they detained her at the station for the next 12 days:

They [the police] kept insisting that I change my statement otherwise they threatened that something would happen to me. They would also insult me and call me rude names. My parents kept trying to see me but they did not allow them to talk to me because they thought my parents would tell me to speak the truth.

Victims also complain about the insensitive way they are treated by the doctors who examine them for evidence of rape. Many, like Krishna, found it a deeply upsetting experience. She said:

[The doctor] asked me to lie down on a table and remove my clothes. When she examined me she inserted a single finger inside me. It hurt and I was scared. I did not like what the doctor was doing to me. She then said something like, “Oh, it was just a small rape, it is no big deal.”

The mother of a three-year-old girl described the medical examination of her daughter, who she suspected had been raped and sodomized by the father, as both distressing and painful. The examination took place in a blood-stained labor ward in a government hospital in Bengaluru instead of a separate room where the child would not be further traumatized. After a lengthy and anxious wait for the doctor to arrive, the examining doctor “pulled her legs back and she screamed.”

According Dr. Shaibya Saldanha, a gynecologist who works with child sexual abuse survivors in the southern city of Bengaluru, most doctors simply do not have the skills to perform such an important role:

Unfortunately no doctor, whether a general practitioner or a gynecologist or a pediatrician has been given any training whatsoever regarding child abuse examination, interviewing, how to take care, what are

rehabilitation procedures, the medical and psychological needs of the child. They have no idea.

The result of such treatment is that many victims decide not to pursue their case. Senior police officer Suman Nalwa, who heads a special unit for women and children in New Delhi, recalls failing to persuade one nervous and reluctant woman to bring charges against her husband for molesting their 11-year-old daughter. Nalwa told Human Rights Watch,

We told her that her name would be secret and the trial would be *in camera* [not in public], and we took them to the hospital for a medical examination. But their treatment in the hospital was so pathetic that she said, “You know, you promised me so many things and this is only the first step.” She just walked out and never came back.

A major problem in India is the lack of effective monitoring of residential care facilities, orphanages and other children’s institutions. In the first half of 2012 alone, the *Times of India* newspaper reported sexual abuse cases in eight different residential facilities in different parts of the country. Three of them, including Apna Ghar, mentioned above, were in Haryana, with others in New Delhi, Karnataka, West Bengal, Goa, and Uttar Pradesh. Alleged abusers were members of staff, older children, and outside visitors including police officers.

Under the Juvenile Justice (Care and Protection of Children) Act, 2000, all existing children’s residential care facilities were supposed to register with the government within six months, with child welfare committees mandated to inspect them. But the law actually contains no penalties for children’s care facilities that do not comply. The government’s system of monitoring and inspection is in any case so dysfunctional that nobody even knows how many such institutions there are in India, let alone how the children in them are treated.

A former child resident of one facility said that where he lived, “nobody dared to share their experience with anybody outside. The general atmosphere was intimidating, scary and oppressive.” He told Human Rights Watch that both wardens and older children were involved in sexually abusing young boys and that a climate of fear prevented anyone from reporting what was going on to managers. In the 15 years he lived there, he said, he was not aware of the facility being inspected once. “A child would dare not complain about the

warden, and those older boys were also so intimidating,” he said. “It had a bullying culture and there were no safeguards.”

In May 2012, India’s parliament took a major step by passing the Protection of Children from Sexual Offences Act. Under the law, all forms of child sexual abuse are now specific criminal offenses for the first time ever in India. Before the new law, different forms of abuse had to be prosecuted under a patchwork of different laws often designed for different purposes, and their uncertain applicability to individual cases of child abuse created obstacles to prosecution. For example, it was not clear whether any law covered non-penetrative sexual acts committed against boys. The new law also establishes guidelines for the police and courts to deal with victims sensitively and provides for the setting up of specialist child courts. There is hope that, taken together, these measures will encourage more victims and their families to step forward, and result in more successful prosecutions.

These are welcome initiatives, but will only make a difference if they are implemented. Experience in India shows that while good laws and policies can be adopted by the central government, implementation is frequently a challenge. An earlier law has in fact already provided for the setting up of courts for the “speedy trial of offenses against children.” But six years later, only the Delhi state government has begun the process of establishing one.

Implementation problems have also hindered other attempts to improve the protection of children. The goal of the Integrated Child Protection Scheme (ICPS), an ambitious nationwide scheme launched in 2009, was to strengthen existing child protection measures, and create new ones, such as a network of district level social workers. But the government admits that the scheme has been slow to get off the ground. According to its own figures, only four of India's 28 states spent the money they were allocated by the central government during the first three years of the scheme.

In most states, important bodies, such as child welfare committees designed to oversee the care of vulnerable children, do not receive the funding they need. Since the ICPS was formed in 2009, the number of such committees has increased, but there are still serious gaps. According to a recent survey, fewer than half of India's 629 districts had appointed a committee, and most members of committees that did exist had received no training in India's juvenile justice or child protection systems. Badly trained and poorly funded child

welfare committees are failing to adequately monitor orphanages and other residential care facilities. It is essential that this work be improved because, as recent cases have highlighted, sexual abuse in such institutions appears to be widespread.

The National Commission for the Protection of Child Rights has been given the task of monitoring implementation of the Protection of Children from Sexual Offences Act. To do this properly, it must be given sufficient staff and resources.

Apart from its domestic laws, India is party to a number of international human rights treaties, including the International Covenant on Civil and Political Rights and the Convention on the Rights of Child, which provide specific protections for the rights of children. They call for measures to prevent and punish abuses by government officials, and place a burden on governments at the central and state level to adopt measures to prevent and punish abuses by private citizens.

Human Rights Watch calls on the Indian government to adopt and enforce policies that will prevent and redress sexual violence against children. International institutions and foreign governments should work with the Indian government to assist in providing training and best practice models that can protect every child in India.

Key Recommendations

India's central and state governments should ensure that the perpetrators of sexual abuse of children are brought to justice. All victims should be provided with the support they need for full physical and psychological recovery and social reintegration.

The Central Government Should:

- Ensure that the National Commission for the Protection of Child Rights has sufficient resources to monitor the effectiveness of the Protection of Children from Sexual Offenses Act. Appointed members should be experts in child protection and be backed up by effective investigative units. The commission should have an independent capacity for investigations.
- Review the Protection of Children from Sexual Offenses Act's effectiveness within a reasonable period, and seek amendments in consultation with women's rights, children's right, and civil liberties activists to address shortcomings in the law, including the presumption of guilt against the accused.
- Use an evidence-based approach to legislative drafting including existing evidence of consensual sexual contact among adolescents under age 18. Consider recommendations from activists to lower the minimum age of consent for sexual contact to reflect the evolving capacity and maturity of adolescents and ensure that the law does not punish the same population—children—that it is designed to protect; under-18s who engage in consensual sexual contact with peers should not be criminally punished.
- Amend the Juvenile Justice Act to require registration and the meeting of specified standards by children's residential care facilities before they open. Establish penalties for facilities that fail to register. Ensure that all institutions housing children are subject to regular and periodic inspections, and institute regulation of residential care facilities.
- Prioritize implementation of the Integrated Child Protection Scheme and ensure that states properly and promptly utilize the resources allocated to them to create effective child welfare committees. Facilitate training of all child welfare committee members on India's juvenile justice and child protection systems.

- Adopt and implement a protocol for the medical treatment and examination of victims of child sexual abuse, in accordance with guidelines developed by the World Health Organization. Ensure that physicians and other medical staff respond to cases of sexual abuse in a sensitive manner that minimizes invasive examination and provides access to continued reproductive, sexual, and mental health services. Train doctors in all public health facilities to adopt and use this protocol.

While the central government should develop suitable policies, it is the state governments that have the main responsibility for proper implementation.

The State Governments Should:

- Implement the Protection of Children from Sexual Offences Act and give priority to the training of the police, court personnel, government social workers, child welfare committee members, and doctors who work with children.
- Establish a commission for the protection of child rights if one does not exist in a state. All states should provide adequate resources so that such commissions can carry out their mandates and operate effectively and independently. Appoint qualified and independent experts to these commissions in a transparent manner.
- Appoint qualified and independent individuals to serve on child welfare committees. Adopt a standard operating procedure and ensure that the committees have sufficient resources for members to carry out all their responsibilities, including mandated inspection of children’s residential care facilities. Ensure that professional counseling services are available for children that have suffered sexual abuse.
- Conduct a survey of all residential care facilities and provide this information to child welfare committees, state child rights commissions, and the National Commission for the Protection of Child Rights. Establish a monitoring mechanism in which children are independently interviewed in a safe environment. Ensure that all institutions housing children are subject to regular and periodic inspections.
- Provide training to police to sensitively handle complaints of child sexual abuse so that they do not re-traumatize victims by aggressively questioning the child or family members. This should include training of junior ranks that have most public dealings at police stations or as first response units. Establish a policy that under

no circumstances should the police attempt to dissuade or intimidate a complainant, with disciplinary consequences for those who do so.

Establish “child courts” to handle cases of child abuse as provided for under central government schemes. Arrangements should be made whereby children do not have to confront the accused, while at the same time ensuring that defendants can hear testimony and instruct their advocate in accordance with their fair trial rights. Steps should be taken to ensure that children are not overwhelmed by court surroundings.

Methodology

Child sexual abuse in India, though widespread, is difficult to document because it is shrouded in secrecy. Fear of social stigma, an unwillingness to implicate family members, and other factors discourage families from exposing abuse. Police misbehavior and a long judicial process are deterrents to seeking redress.

Human Rights Watch spoke with numerous experts and activists before embarking upon research for this project. We also met with government officials who agreed that there were failures in ensuring the protection of India's children and said they were committed to initiating change. Because the success of India's response to child sexual abuse depends largely on how India's state governments implement the central government's different child protection policies, this report focuses on four parts of the country with different records in tackling child sexual abuse.

Uttar Pradesh, India's most populous state, has a poor history of governance generally and its response to child abuse is no exception. We conducted interviews in Varanasi, Allahabad, and neighboring districts, in both rural and urban settings. We chose New Delhi partly because it is the home of the central government, the National Commission for the Protection of Child Rights, and many nongovernmental organizations (NGOs). Also, its state government is relatively effective and activists say it has done more than most to strengthen child protection mechanisms such as child welfare committees and special juvenile police units. Haryana is one of India's wealthiest states, but there have been many allegations that officials have failed to protect children in residential care institutions in the state. We also conducted interviews in Karnataka state, in southern India, because its state commission for the protection of child rights is considered a model for other states. Interviews were also conducted in the cities of Chennai and Mumbai, and elsewhere by telephone or email.

Most interviews were conducted between April and June 2012. Human Rights Watch interviewed more than a hundred people including independent and government child protection experts and officials, police officers, doctors, social workers, and lawyers. We also spoke to eight victims of child sexual abuse and the relatives of another nine victims, who all agreed to freely discuss their experiences. One of these victims was male, seven were female. Of them, four were over 18 but spoke of their experiences while they were children. We largely

met them through NGOs that were providing them with support and counseling and felt the individuals would not be harmed in an interview with us. Every effort was made during the interviews not to re-traumatize the victims. In each case, the victims and their relatives expressed a desire to tell their story to prevent the suffering of others who might be in similar situations. In interviews with children, a close relative of the child was always present.

Interviews were conducted either in English or in Hindi through an interpreter, who was either a member of the NGO supporting the research or working with Human Rights Watch itself. The interpreters were all women.

It was not possible to speak to some of the victims in the cases discussed in this report, most notably children in residential care facilities that were closed to outsiders due to ongoing court proceedings or investigations. We also did not want to risk further traumatizing children who had already given their accounts to the police, doctors, the courts, and sometimes journalists. In a number of cases therefore, Human Rights Watch pieced together what happened by conducting interviews with officials, lawyers, and NGO staff, backed up, where possible, with secondary material, including court documents, official enquiry reports, police statements, news articles, and videos.

In this report, the word “child” refers to anyone under the age of 18. The Convention on the Rights of the Child states, “For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”¹ The Juvenile Justice (Care and Protection of Children) Act of 2000 defines a child as “a person who has not completed eighteenth year of age,”² and a person is deemed to have reached “majority” on completion of 18 years under the Indian Majority Act of 1875.³

In accordance with Indian law, none of the victims of sexual abuse, nor their parents, have been identified in this report.

¹ Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, art. 1. India ratified the CRC in 1992.

² Juvenile Justice (Care and Protection of Children) Act, *Ministry of Law and Justice, Government of India*, No. 56 of 2000, <http://wcd.nic.in/childprot/jjact2000.pdf> (accessed April 15, 2012), art. 2(k).

³ Indian Majority Act, No. 9 of 1875, <http://www.vakilno1.com/bareacts/Laws/The-Indian-Majority-Act-1875.htm> (accessed April 15, 2012).

I. Child Sex Abuse in India

India is home to 430 million children, roughly one in five of all children (individuals under age 18) in the world. From the moment they are born, the challenges many of them face are staggering.⁴

At least 1.7 million children die before the age of five every year in India.⁵ Malnutrition means that almost half of those that survive are stunted, and 43 percent are underweight.⁶ The right to education is enshrined in the Indian constitution,⁷ but, though the situation is improving, there were still 8.1 million out-of-school children in mid-2009.⁸ The government estimates that 40 percent of India's children are vulnerable to threats such as trafficking, homelessness, forced labor, drug abuse, and crime, and are in need of protection.⁹ More than half of the country's married women were wed before the legal age of 18.¹⁰ Currently, only about 60 percent of births in India are even registered.¹¹

In 2007 the government published its first ever survey to address what the then minister of women and child development, Renuka Chowdhury, described as the “conspiracy of silence” surrounding child sexual abuse.¹² The report uncovered some alarming statistics, though, as explained below, the report methodology was limited and the numbers should be taken more as an indication of the seriousness of the problem than a reflection of the actual

⁴ The Planning Commission, Government of India, “Report of the Working Group on Child Rights for the 12th Five Year Plan (2012–2017),” http://planningcommission.nic.in/aboutus/committee/wrkgrp12/wcd/wgrep_child.pdf (accessed April 18, 2012), p. 8.

⁵ United Nations Children’s Fund, “The Situation of Children in India – a profile,” May 2011, http://www.unicef.org/india/The_Situation_of_Children_in_India_-_A_profile_20110630_.pdf (accessed April 18, 2012).

⁶ *Ibid.*

⁷ The Indian Constitution in art. 21A provides for “free and compulsory education” for all children up to age 14. See Press Trust of India, “Right to Education Act constitutionally valid, says Supreme Court,” *India Today* (New Delhi), April 12, 2012, <http://indiatoday.intoday.in/story/right-to-education-supreme-court/1/184057.html> (accessed April 13, 2012).

⁸ United Nations Children’s Fund India, “Education,” http://www.unicef.org/india/education_196.htm (accessed April 18, 2012).

⁹ The Planning Commission, Government of India, “Report of the Working Group on Child Rights for the 12th Five Year Plan (2012 – 2017),” p. 15.

¹⁰ HAQ: Centre for Child Rights, “India Child Rights Index,” 2011, http://www.haqrc.org/sites/default/files/India%20-Child%20Rights%20Index_o.pdf (accessed April 18, 2012), p. 227.

¹¹ *Ibid.*, p. 54.

¹² Ministry of Women and Child Development, Government of India, “National Study on Child Abuse: India 2007,” 2007, <http://wcd.nic.in/childabuse.pdf> (accessed April 16, 2012), p. i.

incidence of abuse.¹³ Of the children interviewed, more than half (53 percent) said that they had been subjected to one or more forms of sexual abuse. Over 20 percent of those interviewed said they were subjected to severe forms of abuse, defined in the report as “sexual assault, making the child fondle private parts, making the child exhibit private body parts and being photographed in the nude.” Of those who said they were sexually abused, 57 percent were boys.¹⁴

The survey also found that very few cases are ever reported. The vast majority of victims (72 percent) said that they did not report the matter to anyone and only 3 percent of them or their families told the police. In most cases the perpetrator was known to the child. For example, 31 percent of sexual assaults were committed by the victim's uncle or neighbor. Among those interviewed, children living on the street, in institutions, or already working were more likely to be the victims of sexual assault than those living with their parents and attending school, but even wealthy families were affected.

The government survey was based on interviews with 12,500 children in 13 different states and was one of the largest ever conducted in the world. However, many child protection experts have criticized the way it was carried out and even its authors admit that most of the respondents were from especially vulnerable backgrounds. For example, when researchers visited schools, they interviewed pupils who their teachers had already identified as being at risk from abuse.¹⁵ Thus, drawing broader conclusions about the percentages of all Indian children affected, given that no random sample of children was done, would be misleading. However, the survey does show that the problem is very significant and that the government is aware of it.

Other studies have shown the seriousness of the problem. In 1998 the Indian NGO Recovery and Healing from Incest (RAHI) conducted India's first study of child sexual abuse. It surveyed 600 English-speaking middle and upper-class women, 76 percent of whom said they had been abused in childhood or adolescence, 40 percent by at least one family member, most commonly an uncle or cousin.¹⁶

¹³ Ibid., p. 73-102.

¹⁴ Ibid., p. 35. The report states that 52 percent of the respondents were boys and 48 percent were girls.

¹⁵ Human Rights Watch interview with Prof. Nadeem Mohsin, project director, National Study on Child Abuse, New Delhi, April 30, 2012.

¹⁶ Recovery and Healing from Incest, *Voices from the Silent Zone* (New Delhi: RAHI, 1998), p. 14.

More recently, in 2005, the international organization Save the Children and an Indian NGO, Tulir - Centre for Healing and Prevention of Child Sex Abuse, surveyed 2,211 school-going children, from different backgrounds, in Chennai.¹⁷ At least 48 percent of the boys and 39 percent of the girls interviewed said they had faced sexual abuse of one form or another, mainly from people they knew, while 15 percent of the children complained of severe forms of abuse, defined in this study as “oral sex, sexual intercourse, making the child touch the offender's private parts, or making the children take off their clothes and looking at them or taking their pictures.”

Official crime records are also indicative of how serious a problem this is. In response to the widely reported rape and murder of a 23-year old student in New Delhi in December 2012, the UN resident coordinator in India and the UNICEF representative issued a joint statement calling for better protection of women and girls against sexual violence. “It is alarming that too many of these cases are children. One in three rape victims is a child. More than 7,200 children, including infants are raped every year. Given the stigma attached to rapes, especially when it comes to children, this most likely is only the tip of the iceberg,” said Louis-Georges Arsenault, UNICEF representative to India.¹⁸

Together with nongovernmental organizations, India’s media has played a leading role in increasing awareness of child sexual abuse in the country. As well as highlighting the enormous scale of the problem, journalists have also exposed failings in the system to protect children, putting considerable pressure on the government to act. Public outrage after high-profile cases has forced the government to address the problem.

In May 2012, in a major step forward, the India's parliament enacted its first law outlawing child sexual abuse. The demand for this law became more urgent after the widely reported case involving Ruchika Girhotra, who was sexually abused in 1990 by a senior police officer when she was 14. Even though there was an eyewitness to the abuse, the alleged perpetrator, SPS Rathore, escaped prosecution for years. Instead he received numerous promotions and eventually retired as Haryana state’s senior-most officer.

¹⁷Tulir, “Prevalence and dynamics of child sex abuse among school going children in Chennai,” 2006, <http://www.tulir.org/images/pdf/Research%20Report1.pdf> (accessed April 18, 2012).

¹⁸ UNICEF, “UN in India condemns the gang rape of a student in New Delhi,” December 31, 2012, http://www.unicef.org/media/media_67097.html (accessed January 3, 2012).

Meanwhile, the Girhotra family said they became the victims of a campaign of harassment. Ruchika was expelled from school, and her brother was arrested several times for theft. Three years after she was abused, Ruchika committed suicide.¹⁹

Finally, 19 years later, in December 2009, Rathore was convicted but sentenced to prison for just six months for “molesting” Ruchika, the only existing law under which he could face charges. After widespread outrage, the Central Bureau of Investigation appealed for a tougher punishment, and a court in Haryana increased the term to 18 months. Rathore is presently out on bail while the appeal of his conviction is pending.²⁰

The National Commission for the Protection of Child Rights (NCPCR) was established in 2007 and is an autonomous watchdog or ombudsman, whose mandate is to ensure that “all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child.”²¹ It has been responsible for some important interventions, such as a campaign against corporal punishment in schools. Despite concerns that it is short staffed, the commission has also been charged with monitoring the implementation of the Protection of Children from Sexual Offences Act, as well as India’s ambitious Right to Education Act of 2009, which compels state governments to provide free education in neighborhood schools to all 6 to 14-year-olds and contains important provisions on child protection.²²

The NCPCR was set up after the discovery in December 2006 of one of the grisliest crimes in Indian history, when at least 19 children and young women were apparently raped and then killed. The murders came to light when workmen came across body parts while unblocking a sewer in front of a home in Noida, a wealthy suburb outside New Delhi. For months the parents of missing young women and children in the nearby slum of Nithari had complained to the police that their girls and boys had disappeared and named the

¹⁹ Ajay Sura, “Family gives up fight against ex-Haryana DGP,” *Times of India*, June 2, 2012, http://articles.timesofindia.indiatimes.com/2012-06-02/chandigarh/31983548_1_ruchika-girhotra-ruchika-case-suicide-and-doctoring (accessed June 3, 2012).

²⁰ Vikram Chowdhury, “Teen Molester Cop SPS Rathore leaves jail,” *NDTV*, November 12, 2010, <http://www.ndtv.com/article/india/teen-molester-cop-sps-rathore-leaves-jail-66032> (accessed April 19, 2012).

²¹ “Home”, National Commission for the Protection of Child Rights, accessed April 16, 2012, <http://www.ncpcr.gov.in>

²² The Right of Children to Free and Compulsory Education Act, *Ministry of Law and Justice, Government of India*, 2009, http://mhrd.gov.in/sites/upload_files/mhrd/files/free_and_compulsory09.pdf (accessed May 7, 2012).

man responsible.²³ However, the police refused to help them. The NCPCR was established to intervene in cases such as this, where the police failed to accept complaints or properly investigate a crime.

However, the Indian government has yet to create an effective social services network to protect children and prevent crimes against them. This shortfall became news in 2012 when Falak, a two-year-old girl, was brought to the hospital with serious injuries, including cuts to her head and bite marks on her cheeks and leg. She died two months later.²⁴

Falak had been left in the care of a 14-year-old, who herself had had a violent upbringing. Her father used to beat her, as did a warden in a children's residential care facility where she lived for three years.²⁵ After being coerced into sex work, she was left taking care of Falak, an illegally adopted baby. She told investigators that she had slapped and bitten the infant to stop her from crying.²⁶ At no time had the state social service system stepped in to assist the 14-year-old despite her history of domestic violence, abuse in a residential care facility, and sexual abuse.

According to Raj Mangal Prasad, chairman of the Child Welfare Committee of South Delhi, which was responsible for looking after both girls once their plight became known, "the story is a grim reminder of failure of the government ... There are lakhs [hundreds of thousands] of Falaks in our country who are waiting for immediate help."²⁷

²³ In February 2009 Mohinder Singh Pander and Surender Koli were found guilty of the rape and murder of 14-year-old Rimpa Haldar and sentenced to death. Pander was acquitted on appeal to the high court. Koli was also found guilty in three other cases. Both men are still on trial for several remaining cases of rape and murder.

²⁴ Child Welfare Committee of South Delhi, various orders, details withheld, 2012. On file with Human Rights Watch.

²⁵ Child Welfare Committee of South Delhi, report, details withheld, February 10, 2012. On file with Human Rights Watch.

²⁶ Police investigation report, details withheld, Vasant Kunj, New Delhi, January 26, 2012. On file with Human Rights Watch.

²⁷ Child Welfare Committee of South Delhi, Order, details withheld, March 16, 2012. On file with Human Rights Watch.

II. Inadequate Responses in Cases of Abuse

We know that a lot of abuse is happening, but people don't talk about it.

—Anand Prakash, People's Vigilance Committee on Human Rights, Varanasi,
May 2012.

What happens after a child has been sexually abused is critical, not only to his or her recovery but also to the protection of other children, since if the perpetrator is never identified or allowed to remain free, the abuse might well be repeated.

The experience of the sexually abused children and relatives we interviewed indicates that the current system is failing. Children's complaints are often dismissed not just by family members or persons in positions of authority, but also by the police, medical staff, and others. Instead of compassion, victims may be re-traumatized by how they are treated once they make their abuse known.

Within the Family and Community

Children need the assistance of trusted adults to protect them from sexual abuse, but the response of adults to these cases is often completely inadequate. They might not wish to confront a relative or risk attracting social stigma to the family. The government's failure to create public faith in its institutions further discourages them from coming forward.

The failure of individual police officers, teachers, doctors, and government workers to respond appropriately to cases cannot also be divorced from wider social attitudes to child sexual abuse. Little has been done to address this. While some state governments and NGOs run programs on child safety in schools, such programs are still relatively rare and are centered mainly in major cities such as New Delhi, Mumbai, Bengaluru²⁸ and Chennai. As a result, most children who do decide to complain or otherwise display signs of their abuse do not receive the support they need. According to Anuja Gupta, who counsels survivors of child sexual abuse and incest through her NGO, RAHI, this can have a devastating impact:

²⁸ Previously known as Bangalore.

It is often better not to tell, than to tell and not be helped. Children somehow find a way of living with the abuse. I'm not saying that that is ideal, but if they do tell someone and are told to shut up, and are not believed, and nothing happens, you're adding two or three layers of trauma on top of the abuse. So it is absolutely essential that the children's caretakers are trained, so that children be helped and received appropriately.²⁹

Jyoti's Story

Now aged 32, Jyoti grew up in a middle-class family in a very small town in western Uttar Pradesh. The town had no decent schools, so Jyoti's parents hired a tutor to help her with her studies. The tutor, a college-educated friend of one her cousins, started sexually abusing her when she was about six years old. Because the tutor was well liked by the family—Jyoti lived in a traditional Indian home with about 20 members of her extended family—for a long time she was unable to expose his crimes against her.

Having undergone therapy for the trauma she suffered, Jyoti now feels able to describe her experiences publicly, which she hopes will raise the profile of child sexual abuse within Indian society. Because children find it so hard to describe what has happened to them, the voice of adult survivors is especially important in bringing attention to the issue. Jyoti told Human Rights Watch:

He was this nice young chap, you know, who talked nicely with all the women of the house. Everyone really trusted him. The abuse started soon after he began teaching me, when I was six years old. I don't remember the exact day the abuse began, but it was around that time. Basically this guy would touch my private parts and also beat me up.... I was just so scared of him. At five o'clock every day he used to knock on the door and it made me so scared. The abuse went on for the next six years. The more I was abused, the worse I did at my studies, and the more my parents insisted the tutor come and teach me. They knew he used to beat me. But they too would hit me. At one point my parents even bought a special cane with which to punish me for not doing well in school.... I just did not have a way of telling them why I was not

²⁹ Human Rights Watch interview with Anuja Gupta, director, RAHI, New Delhi, July 23, 2012.

doing well. I was just a small kid. I wasn't sure if the abuse was a normal thing that happened with everyone around, or just me. I didn't know.

Then my health started getting worse. I used to have this temperature above normal all the time. I had problems with my private parts. It would itch when I went to pee. I told my mum about that and they took me to a doctor but they didn't realize what was happening. In our society we are always taught to respect our elders. Not that you shouldn't, but sometimes it goes too far, you know, that relationship. Can you really go against someone who is elder than you? Would anyone have trusted me if I had told them?

The sexuality of a woman is a big issue in our society and no matter what happened a woman is always blamed. A woman would never think of going to the police and I don't trust the police for anything in India. The abuse stopped when my tutor got a job in a foreign country. But it was much later that I told anyone. I was aged 19 or 20 then, and studying at a college close to Delhi. I went to a local hospital. I just knew I needed help, so I made an appointment with a psychiatrist. But that meeting turned out to be disastrous. I explained everything to him and he just wrote out some medicines and told me to come back next week.

Then, several years later, I heard about an organization called RAHI [Recovery and Healing from Incest], that offers counseling to abuse survivors. That was like the turning point of my life. If you saw me five years back I was in a bad shape. Really low on confidence and afraid and I couldn't even talk to people. But after undergoing therapy, that feeling of not being good enough, being smaller, just goes away. I finally plucked up the courage to tell my mother. It is very embarrassing to talk about sex with your parents, and it was a very small conversation. But she believed me.

I really think there needs to be a major nationwide campaign to teach people to pick up the clues that a child is being abused. One day I was so nervous I rubbed my finger so badly that it started bleeding. I thought it might just help me not study that day. The signs were there and my parents couldn't pick them up. So I would say that kids who are being abused are telling, but adults are not listening.³⁰

³⁰ Human Rights Watch interview with Jyoti (pseudonym), New Delhi, May 5, 2012.

But even if the child is believed, he or she is often discouraged from filing a complaint. Police officers, family members, and influential voices in the community often prefer to handle allegations of abuse unofficially and discretely.

A 2012 case in New Delhi demonstrates how dangerous this approach can be. Nandan Prasad Shah was convicted and received a life sentence after he abducted, bound, and raped a six-year-old girl who was a member of his extended family.³¹ During the trial it emerged that Shah had previously attempted to rape another female member of the family and had also attacked a different girl. In neither instance did the family take any action against him. Presiding Judge Kamini Lau said that the family actually had tried instead to protect the accused and to impede the trial:

Having come to know that a person in the family was a sexual maniac who spared none, was it not necessary for the other members of the family, particularly the male members, to have checked him and to have taken suitable action against him?... It is ironical that rather on the contrary, their attempt was to assist the accused by trying to prevent the material witnesses ... from deposing in the Court.³²

Another recent court case provides a wrenching example of a family member failing to respond properly to an incident of child sexual abuse. In July 2011 a female resident of a slum in New Delhi briefly left her six-month-old granddaughter in the care of her neighbor, Sonu Lalman. According to the statement she later made in court, she next saw the baby after about 15 minutes, in tears, and bleeding from her vagina. She then went to confront the attacker:

I asked him what had happened to the child ... Sonu fell on my feet and sought forgiveness as he had committed a wrong. When Sonu repeatedly asked me for forgiveness, thinking that the child was a female and it would affect her future, I did not raise any alarm and kept quiet.³³

³¹ *State v. Nandan Prasad Shah*, Tis Hazari Courts, New Delhi, January 24, 2012. Judgment on file with Human Rights Watch.

³² *Ibid.*

³³ *State v. Sonu Lalman*, Tis Hazari Courts, New Delhi, February 2, 2012. Judgment on file with Human Rights Watch.

It was only because the bleeding continued into the following day that the child's family decided to take her to hospital. The doctor alerted the police, and Lalman was arrested. The case was dealt with quickly and he was sentenced to 10 years for raping a minor.

Emotional Conflict in Reporting Abuse: Case of Deepti

Therapists say that sometimes children misread abuse as evidence of special attention and are unable to blame the person, particularly if the abuser is a parent or someone close to the child. Deepti, now an adult, still admits to being confused about her abuse at the hands of her father because, she says, he is a "good guy."

Deepti says her father has molested her since she was 13 but she does not want to report his behavior. She is now 18 but still lives with her parents in their two-room house in a Bengaluru slum. Human Rights Watch was put in touch with Deepti by a child rights NGO that provides her with counseling. She told Human Rights Watch:

We all used to sleep together in one small room. There was no protection for us. One day I told him to stop what he was doing or I would leave home. He stopped for two to three months then started to do that thing again. I told my mother about it, but she said I was lying. I felt very bad and spoke to the head of the NGO and some friends about it. They told me to speak to my father again, and he stopped completely. But he did it again only the day before yesterday, when we were watching TV together in the same room. I don't know how to escape this situation. My father is a good guy and I know he feels bad about what he is doing.³⁴

Although Deepti refused any offer to take any further action, she did speak with her sister to ensure some protection. Meanwhile she is continuing her education and is an intern at the NGO that is helping her.³⁵

³⁴ Human Rights Watch interview with Deepti (pseudonym), Bengaluru, May 24, 2012.

³⁵ Human Rights Watch email correspondence with activist assisting Deepti, details withheld, January 10, 2013.

Angry Response by Family Members: Case of Aditi and Ria

If a mother confronts a family member alleging child sexual abuse, she often is at risk of being thrown out of her home, particularly if the allegation is against one of her in-laws. There are no easily accessible programs to assist a parent in such situations.

Aditi left her home in a village in West Bengal at the age of 16 when her parents sent her to work as a maid in New Delhi. There, she became pregnant by the man who was supposed to be finding her a job. He abandoned her when their baby, Ria, was born. Aditi was homeless until she was rescued by an NGO working with destitute women, Shakti Shalini, which then found her a job. She settled down and later married a friend of her employer. But the marriage collapsed after Aditi accused her brother-in-law of molesting Ria, who, by this time, was four years old. Aditi said:

One evening at about 8 o'clock, I left my brother-in-law playing with my daughter when I went inside to make dinner. Later, she said that she wanted to pee. When I started helping her take off her jeans, I noticed he had done something to her. I brought her inside and washed her off. I didn't say anything to anyone that night because I wasn't sure if someone would accuse me of lying. After that, whenever I'd leave the house he would do these things to her, so I stopped leaving her alone at home.

One day however a water tanker came to our neighborhood and I had to run to fetch water. I did not even think about my daughter, who was sleeping inside. When I came back something had happened to her. So I called one of the women in the family who agreed that she had been abused, and she told my husband. My daughter told everyone what had happened to her, so we decided to go to the police. They questioned me, and my daughter, and then spoke to my brother-in-law.

The police asked me what they should do with him, and I said they should put him behind bars for a few days. They took him in and beat him up. They also interrogated my husband who said he hadn't seen anything. He said his brother couldn't have done something like this, and he would only

believe it possible if he saw it with his own eyes. So then I told the police to let him go, to tell my brother-in-law to take his stuff and go away from us.

But after that my husband said he didn't trust me and said that perhaps I had inflicted these wounds on my daughter myself. That's when I decided that I had to take my child elsewhere."³⁶

Ostracism by Community: Case of a 12-year-old in Varanasi

Even in cases where an adult does decide to help an abused child, reporting the abuse can result in social stigma.

In February 2012 in the city of Varanasi, in northern India, Ahmed's 12-year-old daughter, Abida, said she was gang raped by three men. Ahmed took the case to the police, he says, because he was afraid other girls would be attacked if the men were not stopped.³⁷ But rather than win the admiration of the community, his decision to make the case public has led to the family being ostracized. The community shunned the child because she was a rape victim and blamed the family for making her so-called disgrace public. The parents of his elder daughter's fiancé cancelled the engagement because they felt that public knowledge of the attack had brought shame to their family. Ahmed is extremely worried about the impact this has all had on the child. "She no longer likes to go out, and she just sits at home, very silent," he said. "She's losing weight and from her face you can read what's going on in her mind."³⁸

The People's Vigilance Committee for Human Rights, an NGO, is providing counseling for Abida, but there are no government services she can draw on for rehabilitation and support.

Settling Privately to Avoid Stigma: Abuse of a Two-year-old near Varanasi

In an effort to avoid the situation confronting Ahmed and his daughter, families cover up the most horrific treatment of children. A local human rights activist told Human Rights Watch that he had been approached by the parents of a two-year-old girl, who they said

³⁶ Human Rights Watch interview with Aditi (pseudonym), New Delhi, September 6, 2012.

³⁷ Human Rights Watch interview with Ahmed (pseudonym), Varanasi, May 7, 2012. See below "Case of Abida" for more details.

³⁸ Ibid.

had been molested. The girl's mother had walked in on her child being abused by a 17-year-old male second cousin in April 2012, in their village near Varanasi. The parents wanted to file a case with the police but were then persuaded by the extended family, including the victim's grandmother, to settle the matter privately. Rather than having the perpetrator arrested, they instead told him to leave the village.³⁹ Anand Prakash, the activist, explained that people in the area always try to keep matters like this private: "We know that a lot of abuse is happening but people don't talk about it. It is all related to respect and the dignity of the family. If it comes out, the family will be disrespected."⁴⁰

Fearing Retaliation: Case of Nikhil

Nikhil is so scared of the repercussions of revealing his abuse that he does not even want the name of his home state revealed in this report.⁴¹ He says that his abuser, a European man, lived in his village for more than 10 years, sexually abusing numerous boys, some as young as 12. Nikhil explained to Human Rights Watch how this man became very popular in his impoverished coastal village by helping poor people out. He would give free English lessons to children and encouraged them to play table tennis in the house he rented from one boy's family. Nikhil said that the man made a point of befriending the boys of the village:

He's very brilliant because first of all he finds out what is in a child's mind. Some children want money, so he gives them money. Some children like food, some children like to go to school, so he helps them.⁴²

The man paid for Nikhil, a school dropout aged 15, to have lessons in Ayurvedic massage and told him to practice on him. Nikhil said the abuse started when, one day, the European told him he should massage his penis. The man said that if Nikhil refused to do so, he would have to return all the money he had spent on him.

Nikhil said it was impossible to tell anyone about what was happening because the European man had become popular in the village, and many boys had become financially

³⁹ Human Rights Watch interview, Anand Prakash, People's Vigilance Committee on Human Rights, Varanasi, May 11, 2012.

⁴⁰ Ibid.

⁴¹ Human Rights Watch interview with Nikhil (pseudonym), location withheld, October 1, 2012.

⁴² Ibid.

dependent on him. “We are a poor family and we cannot fight with them,” said Nikhil. “Even now I am afraid of them. I am afraid of these people.”⁴³

The man’s abuse was eventually reported to the state authorities by a European couple who discovered what was happening. A local NGO persuaded Nikhil and three other boys to go to the police, but after only one day the others withdrew their complaints, leaving Nikhil alone to confront his abuser. The police agreed to file charges against the European and confiscated his passport. A trial began in 2009. He was given bail and has subsequently absconded. Nikhil says he still receives threats:

The village people support him. They believe he is innocent, they don’t know what happened inside his house. I am afraid of some people and don’t go alone anywhere at night in case they see me. One time they came to my house and said that if I talk against him they will kill me.⁴⁴

Abuse in Schools

Teachers and other school staff hold positions of trust and authority. Yet, when cases of sexual abuse are exposed, schools sometimes choose to deny or discredit the victims. In 2012, for example, officials ignored serious complaints made by 11 girls staying at a hostel attached to primary schools in Kanker district of Chhattisgarh state, in central India. The girls, aged 8-12, said they had been repeatedly raped by one of their teachers and a watchman. An investigation by *Tehelka* magazine found that the girls had told other school staff members about the abuse, as well as district education officials, and the village council. But even though the allegations were investigated, no action was taken for months.⁴⁵ Eventually the district administrator heard the allegations and the police were finally called in. At the time of writing, they had arrested the two men accused of rape and six others, who had not acted on the girls’ complaints.⁴⁶

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Anil Mishra, “Kanker and its sordid tale of rapes and abuse,” *Tehelka*, January 10, 2013, <http://tehelka.com/kanker-and-its-sordid-tale-of-rapes-and-abuse/#> (accessed January 11, 2013).

⁴⁶ S.S. Navarji, “Two officials arrested for inaction in Kanker incident,” *Times of India*, January 15, 2012, <http://timesofindia.indiatimes.com/city/raipur/Two-officials-arrested-for-inaction-in-Kanker-incident/articleshow/18027072.cms> (accessed June 16, 2012).

This was a particularly shocking case, but schools across India need to introduce rigorous child protection measures. Teachers and managers need to do much more to ensure that all schools are safe. This includes the proper vetting of all adults who have access to students, including support staff like school bus drivers. In one of several recently reported cases, a driver and conductor were accused of raping a seven-year-old girl in Ghaziabad, near New Delhi, for months on a regular basis after they had dropped off the other children. According to press reports, the girl's parents complained to the school, which did nothing.⁴⁷

Case of a Government School in Allahabad, Uttar Pradesh

On October 25, 2011, a group of 15 mothers made the following complaint to a police station in rural Uttar Pradesh, close to the city of Allahabad:

Our girls are students of the [name withheld] school where on 22-9-11, at around 1 pm, the headmaster Chintamani Mishra called them one by one under the pretext of a health exam, took their clothes off and touched their private parts, while talking to them in a lewd manner. We request you to please register our plea and do whatever is needed.⁴⁸

According to local activist Govind Saran, the women only went to the police because of the courage of one girl and her mother, who approached the others to persuade them into seeking action against the school principal for his alleged repeated abuses. The girl's grandmother, Maya, said that the others were initially reluctant:

Some of the villagers said, "This matter is too complicated for us handle, so drop it. Otherwise, you never know what people may do. They may kill you. They may shoot you. Just hold your tongue and sit tight." But we refused. We may be poor, but we are going to fight. We are going to fight for our honor.⁴⁹

The 15 women decided to make the abuse public and sought assistance from Saran to lodge a complaint with the police. "If this girl did not break her silence then no one would have

⁴⁷ Purusharth Aradhak, "Bus staff abuse 7 year old girl for months," *Times of India*, September 8, 2012, http://articles.timesofindia.indiatimes.com/2012-09-08/delhi/33695827_1_ghaziabad-private-school-driver-and-conductor (accessed September 12, 2012).

⁴⁸ Police First Information Report, details withheld, October 25, 2011. On file with Human Rights Watch.

⁴⁹ Human Rights Watch interview with Maya (pseudonym), location withheld, August 17, 2012.

known about it,” Saran said. “Then if our NGO had not got involved nothing would have happened, except the community would have gone for negotiation [with the teacher].”⁵⁰

Following their complaint, the police arrested the headmaster and charged him under section 354 of the Indian Penal Code, for “assaulting a woman with intent to outrage her modesty.”⁵¹ The local teacher's union did not support the students but went on strike in protest of Mishra’s arrest. The teacher’s union accepted Mishra’s account that he had been framed by the villagers because of a dispute over jobs and money and held strikes in more than 80 schools and protest marches in Allahabad, which were supported by local politicians.⁵² At the time of writing the case had not gone to trial.

Case of a Government School in Chikballapur District, Karnataka

In Karnataka, the South India Cell for Human Rights Education and Monitoring (SICHREM) investigated allegations that a headmaster at a public school was molesting pupils. SICHREM was asked to intervene by a parent sitting on the school's management committee who felt that the state’s education department had ignored the complaint.⁵³

A SICHREM team visited the school and interviewed the school authorities and more than 20 students. The mother of the 12-year-old girl who made the allegations did not want to involve the police and so did not have her daughter speak to SICHREM.⁵⁴ The girl's sister, however, did speak to the organization, and said that, “He [the headmaster] asked all the children to go to another classroom, and told her [the sister] to come into his room. He hugged her and kissed her and touched her private parts.”⁵⁵

Other children said that the headmaster asked them do odd jobs for him, and if they refused he used to “pinch their cheeks and breasts.”⁵⁶ Following SICHREM's intervention, the local education department sent a committee to investigate, but it found there was no evidence

⁵⁰ Human Rights Watch interview with Govind Saran, Allahabad, May 25, 2012.

⁵¹ Indian Penal Code, No. 45 of 1860, <http://www.vakilno1.com/bareacts/indianpenalcode/s354.htm> (accessed April 15, 2012), sec. 354.

⁵² “Headmaster’s arrest to be raised in the Legislative Assembly,” *Dainik Jagaran* (Allahabad), September 30, 2011.

⁵³ Human Rights Watch interview with Gangadhara Reddy, Bengaluru, May 23, 2012.

⁵⁴ Human Rights Watch interview with Gangadhara Reddy.

⁵⁵ Interview with the child, recorded by SICHREM. Translation on file with Human Rights Watch.

⁵⁶ Human Rights Watch interview with Gangadhara Reddy.

against the teacher and cleared him of any wrongdoing. Gangadhara Reddy of SICHREM believes that education officials have covered up the incident. He said the department report, “is biased and far from reality. We are urging the state commission for protection of child rights to look seriously into this issue and take appropriate actions against the accused.”⁵⁷

⁵⁷ Human Rights Watch email interview with Gangadhara Reddy, July 28, 2012.

III. Failure of the Justice System

When a case is reported there needs to be a simple response, by the police, by the health services and by the whole system. But at the moment it is a three-ring circus.

–Vidya Reddy, Tulir (Centre for the Prevention and Healing of Child Sexual Abuse), Chennai, April 2012.

Only a tiny proportion of child sexual abuse cases are ever reported to the police. One of the most important reasons why children and their relatives choose not to come forward is a fear that they will not be treated sympathetically. Indeed, many victims and the adults supporting them endure terrible experiences that add to their trauma. These can include intimidating interviews by police officers, degrading and painful medical examinations, and intimidation by perpetrators to drop charges. Court cases too can be unpleasant experiences for the child since they can last for years and involve stressful cross-examinations.

This can deter people from coming forward and allow perpetrators to get away with their crimes unpunished. As Vidya Reddy of the Chennai-based NGO Tulir (Centre for the Prevention and Healing of Child Sexual Abuse) explained:

When a case is reported there needs to be a simple response, by the police, by the health services, and by the whole system. But at the moment it is a three-ring circus.⁵⁸

India's new Protection of Children from Sexual Offences Act and several prior initiatives have sought to address many of these issues. In every police station in the country, for example, there is now supposed to be a special juvenile police officer, who is trained to deal sensitively with crimes involving children.

At times, the Indian criminal justice system has proven itself capable of responding decisively to child sexual abuse, as in the case above of Sonu Lalman, who was

⁵⁸ Human Rights Watch telephone interview with Vidya Reddy, Tulir, April 17, 2012.

convicted for raping a six-month-old girl. A doctor who had examined the child's wounds reported the case to police. Lalman was arrested and within seven months had been tried, convicted, and sentenced to 10 years in prison. Presiding Judge Kamini Lau in her verdict said:

This case is a glaring example of the growing menace of sexual abuse of young children. A substantive, stern sentence is required to be imposed upon the convict so that it is not only in commensuration with the gravity of the crime but also serves as an example for the others.⁵⁹

Unfortunately such a decisive justice system response is seldom seen in cases of child abuse. There is a great deal of inconsistency in the way the police, doctors, and the courts in different parts of the country handle such cases. “The process of justice has to be a process of healing where the child is empowered by the whole system,” Shantha Sinha, chairperson of the National Commission for the Protection of Child Rights, said. “Every step of the way has to help, and if it doesn't, then forget it.”⁶⁰

The Police

The police have a crucial role to play in combating child sexual abuse because they should be the first point of contact for anyone wishing to report a case. The sensitivities required for this role are recognized by the Juvenile Justice (Care and Protection of Children) Act of 2000, which obliges every police station to have a specially trained “child welfare officer” and every district and city to have “special juvenile police units.” Their job is to “coordinate and upgrade the police treatment of juveniles and children.”⁶¹

Each of these units is meant to be supported by social workers funded by the Integrated Child Protection Scheme.⁶² Child rights experts and lawyers are brought in to train the units, but as with other government programs, their effectiveness differs from state to state.

⁵⁹ *State v. Sonu Lalman*, Tis Hazari Courts.

⁶⁰ Human Rights Watch interview with Shantha Sinha, chairperson of the National Commission for the Protection of Child Rights, New Delhi, July 25, 2012.

⁶¹ Juvenile Justice Act, art. 63.

⁶² Ministry of Women and Child Development, Government of India, “Integrated Child Protection Scheme,” 2009, http://www.indg.in/social-sector/women-and-child-development/the_integrated_child_protection_scheme_icps.pdf (accessed April 20, 2012).

In New Delhi, the Special Juvenile Police Unit works closely with NGOs and has begun a community outreach program to inform people about child rights and child safety issues. The head of the unit, Additional Deputy Commissioner Suman Nalwa, told Human Rights Watch that efforts had also been made to educate the police force. Nalwa admitted she had doubts about how soon, if ever, the situation would change. “It is a long shot,” she told Human Rights Watch. “We have already lost 60 years [since India’s independence]. I don’t know how many more years it will be before we can change the mindset of society.”⁶³

The Special Juvenile Police Unit in Bengaluru, Karnataka state, also has a relatively good reputation. It has set up a new police post next to the city's two Child Welfare Committees (CWCs), which are responsible for the care and protection of vulnerable children.⁶⁴ Meena Jain, chairperson of one of the committees, said the move should greatly enhance coordination. “Without the police, the CWC cannot do great work,” she said. “They are the key stakeholder in our functioning.”⁶⁵

But in other parts of the country, special juvenile police units exist only in name. The head of a police post in Uttar Pradesh conceded to Human Rights Watch that officers were not equipped to properly deal with cases of sexual violence, and so tried to avoid them. He said, “The number of police persons is very low, and 99 percent are not well trained. If a girl is raped, most of them don't know how to handle the case.”⁶⁶

According to Suman Nalwa, there are several reasons why the police operate differently in major cities and elsewhere. In big urban areas, she said, people are generally more aware of their rights and there is likely to be a stronger media and civil society than in remote rural areas. She told Human Rights Watch,

With the Delhi Police there are more checks and balances than you will find in some states or districts. In those places we need a much stronger

⁶³ Human Rights Watch interview with Suman Nalwa, additional deputy commissioner, Special Juvenile Police Unit, New Delhi, September 17, 2012.

⁶⁴ Human Rights Watch interview with Pronab Mohanty, joint commissioner of police (crime west), Bengaluru, May 23, 2012.

⁶⁵ Human Rights Watch interview with Meena Jain, chairperson of child welfare committee, Bengaluru, May 25, 2012.

⁶⁶ Human Rights Watch interview with police officer, details withheld.

supervisory mechanism. The role of the supervising officer is so important, but what is he going to do if he is part of the problem himself?⁶⁷

Case of Mandeep

The case of Mandeep illustrates how police failures can have catastrophic consequences.

When Mandeep, 15, was hospitalized with burn injuries from a suicide attempt at her home, in Uttar Pradesh, she explained to medical workers that she took this step after a 35-year-old neighbor forced her to have oral sex with him on June 12, 2011. She died a week later.

Her family told Human Rights Watch that two weeks earlier, she had successfully fought off her abuser, but when she went to a police station, officers there accused her of lying. The family took up the issue with the head of the village, but he advised them not to make a formal complaint and instead reach some sort of informal settlement.⁶⁸

After she was attacked for the second time, Mandeep did not tell anyone in her family what had happened to her and the next day doused herself in kerosene and set herself alight. According to her uncle, she felt there was no one she could turn to:

She did not say what had happened to her out of shame. When she remembered that incident she was disturbed. She set herself on fire when everybody was out in the fields. She was burning for one hour.⁶⁹

Mandeep's family then took her to hospital, where she survived for eight days. During this time, a journalist videoed Mandeep naming the man who she said had attacked her and briefly describing what had happened. She said, "He caught me while I was returning from the field. He did it in my mouth and threatened to shoot my mother and father."⁷⁰

Her father said that doctors, policemen, and the other community members tried to dissuade him from pursuing the case, warning that the alleged perpetrator might attack

⁶⁷ Human Rights Watch interview with Suman Nalwa.

⁶⁸ Human Rights Watch interview with Mandeep's (pseudonym) uncle, name withheld, Varanasi, May 11, 2012.

⁶⁹ Ibid.

⁷⁰ Details withheld. Copy of video on file with Human Rights Watch.

them in retribution.⁷¹ Despite this, he persisted and the alleged attacker was arrested. As of January 2013 the trial had not yet started.

Mandeep's father told Human Rights Watch that his daughter should have received better support from both the community and the police:

Maybe her life would have been saved if on the first occasion the police had made an effort. But instead at every step they abused us, yelled at us, and even today people threaten us, say we're going to get killed. If only the policemen had listened to her, her life would have been saved.⁷²

Case of Krishna

Krishna says she was raped in June 2012, when she was 12 years old.⁷³ She said her attacker was a young man from a neighboring village in eastern Uttar Pradesh, who was from a politically influential family. When she went to report the case to police, she said they detained her for 12 days to get her to retract her complaint. She told Human Rights Watch:

When I got to the police station I was interrogated by the station chief. When I told him what had happened he said I must have agreed to go with him [her attacker]. The policeman then abused me and called me a "motherfucker" and other rude words. They refused to accept my side of the story.

I was kept in the police station and was locked up. The woman officer-in-charge insisted that I sleep in her bed. I had to sleep at her feet. They kept insisting that I change my statement otherwise they threatened that something would happen to me. My parents kept trying to see me but they did not allow them to talk to me because they thought my parents would tell me to speak the truth.... They kept me in jail for 12 days. They didn't let me meet my parents. When I think of that time I'm afraid.⁷⁴

⁷¹ Human Rights Watch interview with Mandeep's (pseudonym) father, name withheld, Varanasi, August 17, 2012.

⁷² Ibid.

⁷³ Human Rights Watch interview with Krishna (pseudonym), Varanasi, August 15, 2012.

⁷⁴ Ibid.

This intimidation did not work however, and when Krishna was taken to see a magistrate, she told him exactly what had happened to her. “I knew I had to tell the truth,” she said. She was released and an NGO is currently helping the family pursue the case.

Case of Neha

Neha says she was raped when she was 16 years old by two men from her village. She is from a low-caste, poor, rural family. She told Human Rights Watch that the police tried to bully her into not reporting what happened:

I went to relieve myself in the fields at about 7 p.m. The two men took me away to a place near a pond. Their faces were covered. They pushed and slapped me. They tore my clothes and they raped me. They said that if I told anyone what had happened to me they would kill my brother. They took me away on their motorbike. They held me for about one hour. When I saw that one of them was going to the toilet I decided to escape. They chased me but did not find me. I hid myself in a small room that I came across on the way home. I spent a long time there. I did not know what to do. I eventually got home by about 3 a.m.

The next day I went to police station with my mother. The police said, “When she came home, did you check if she was actually raped?” The man on duty told me that I had myself chosen to go with this man. He told me to shut my mouth and go back home. I was so angry that I wanted to hit him. Why was he doubting me?⁷⁵

Neha and her mother were determined not to let the matter drop, so they approached an NGO, the People's Vigilance Committee on Human Rights (PVCHR), which is based in nearby Varanasi. Along with PVCHR activist Mangala Prasad, they returned to the police station the next day.⁷⁶ But the police were unsympathetic. Neha told Human Rights Watch,

The police refused to register the complaint quickly. I didn't like how they behaved. Some of them told me that I must have wanted to go with those boys.

⁷⁵ Human Rights Watch interview with Neha (pseudonym), Varanasi, May 7, 2012.

⁷⁶ Human Rights Watch interview with Mangala Prasad, People's Vigilance Committee on Human Rights Varanasi, May 7, 2012.

They told me to admit I was their girlfriend. When I went for the check-up, the doctor said I had been beaten up, bitten, and scratched, but she said there was no internal injury. I started to feel helpless. Nobody believed me, and nobody believes me now. The villagers keep saying horrible things about me.⁷⁷

The senior officer also threatened Prasad, the PVCHR activist who helped Neha make her complaint public. Prasad was then arrested on charges of “breaching the peace of the village,” which he believes was an attempt to silence him.⁷⁸ Later the police did arrest one of the men who allegedly attacked Neha, and he is currently out on bail.⁷⁹

Case of Abida

Abida, 12, whose case is described above, says she was abducted and confined for several hours during which she was raped by three men in Varanasi in February 2012.⁸⁰ The family cleaned up Abida before taking her to the police. The doctor failed to confirm the rape and the police then allegedly beat up her father, Ahmed, and her brother, accusing them and the family of telling lies. Ahmed said,

My daughter went to her uncle's house after school to call on her aunt. While she was returning home one person put tape on her face and took her into a house where they were doing building work. She told me that that's where she was gang raped. They let her go late that night, at about 10 or 11 p.m. She had passed out and they left her outside. When she woke up she asked someone to help her find her uncle's house.... Her physical condition was very bad. She could not walk up the stairs and her clothes were covered in blood. At first we were confused and thought she was menstruating, so we decided to wash her clothes.

The following day I took her to the police station to make an FIR [First Information Report]. The police then took her to a government hospital for

⁷⁷ Human Rights Watch interview with Neha (pseudonym), May 7, 2012.

⁷⁸ Code of Criminal Procedure, No. 2 of 1974, <http://mha.nic.in/pdfs/ccp1973.pdf> (accessed April 15, 2012), sec. 107.

⁷⁹ Soon afterwards when she was 17, Neha's parents married her to a man at least 20 years older from another part of the country. The husband knew of the assault but promised to treat her well. However, he was abusive as well and raped Neha. She told her parents, and her father brought her back home three days later.

⁸⁰ Abida is a pseudonym.

the medico-legal examination. That happened at about midnight. My daughter said that the doctor had only checked her clothes and looked for bruises and other injuries. The doctor also asked if she was menstruating.... The policemen then interrogated me and my daughter for about three hours. They said that the medico-legal report showed that there had been no rape. They said, “You are telling us lies. We know that you are fake.” The girl was continuously saying that no, she had been raped, and she was so afraid, but the police told us not to tell anyone. They told us to settle the case.⁸¹

The police were wrong to interrogate a child for three hours in an aggressive manner, and, in addition, Ahmed says he was beaten by the police:

The police then grabbed me and slapped me several times. Three or four men did this to me, including the station officer. They also beat my son, who is 18.... I'm very angry that this bad thing has happened. I am poor. I don't have much money to fight this case but I am looking for justice. Those perpetrators should be sent to jail. I have filed a Right to Information Case to get a copy of the medico-legal report. My daughter also gave a statement directly to the magistrate, and two of the [three] men were arrested.⁸²

This case had still not gone to trial at this writing.

Traumatic Medical Examinations

Under Indian criminal law, the prosecution can secure a conviction for rape based solely on the testimony of the victim, so corroboration by forensic evidence is not mandatory. It is routine practice, however, for victims to be examined by a doctor. The findings are commonly known as medico-legal reports, and as in cases of Neha and Abida, described above, they can play an important part in whether or not the police and prosecutors believe a rape survivor's account.⁸³

⁸¹ Human Rights Watch interview with Ahmed (pseudonym), Varanasi, May 7, 2012. As described above, the family was also ostracized by the community.

⁸² Ibid. Human Rights Watch requested interviews with senior police offices in Varanasi, but they declined.

⁸³ Human Rights Watch, *India – Dignity on Trial: India's Need for Sound Standards for Conducting and Interpreting Forensic Examinations of Rape Survivors*, September 2010, <http://www.hrw.org/reports/2010/09/06/dignity-trial-o>.

Many doctors in India simply do not have the skills to perform such an important and sensitive role.⁸⁴ Many acts of child sexual abuse do not involve violence or penetrative sex, and victims often wash themselves after being assaulted. Doctors then report there is no evidence of rape.⁸⁵

Also, doctors may be so focused on gathering evidence that they fail to consider that their role should also include treating and counseling the child. Additional deputy commissioner of the New Delhi Police, Suman Nalwa, who heads its special unit for women and children, recalled failing to persuade one nervous and reluctant woman to bring charges against her own husband for molesting their 11-year-old daughter because of their bad experience in a hospital. Nalwa said,

We told her that her name would be secret and the trial would be *in camera* [closed to the public], and we took them to the hospital for a medical examination. But their treatment in the hospital was so pathetic that she said, “You know, you promised me so many things and this is only the first step.” She just walked out and never came back.⁸⁶

Insensitive medical examinations can also do a great deal of harm to children, says Dr. Shaibya Saldanha, a gynecologist who works with child sexual abuse survivors in Bengaluru:

Unfortunately no doctor, whether a general practitioner or a gynecologist, or a pediatrician, has been given any training whatsoever regarding child abuse examination, interviewing, how to take care, what are rehabilitation procedures, the medical, and psychological needs of the child. They have no idea. It's not in our curriculum. So the result is the child is further traumatized.⁸⁷

⁸⁴ Ibid.

⁸⁵ The World Health Organization, in its guidelines on medico-legal care for victims of sexual assault, states “only approximately one-third of rape victims sustain visible physical injuries.” Nonetheless, many Indian police officers, doctors, and judges still seek evidence of a “struggle” and “injuries.” When they fail to find these, they often conclude that no rape occurred. See World Health Organization, “Guidelines for medico-legal care for victims of sexual violence,” http://www.who.int/violence_injury_prevention/publications/violence/med_leg_guidelines/en/index.html (accessed May 10, 2012).

⁸⁶ Human Rights Watch interview with Suman Nalwa.

⁸⁷ Human Rights Watch interview with Dr. Shaibya Saldana, Bengaluru, May 25, 2012.

A regular part of the examination of female rape victims, including children, in India, is the “two-finger test” to check the size and state of her hymen and vagina for signs of sexual intercourse and violence. This is standard practice in many Indian hospitals, even though forensic experts say that the test has no scientific value⁸⁸ and a top-level government committee has called for it to be abolished because it “heighten[s] the trauma for victims of sexual abuse.”⁸⁹ Human Rights Watch believes that where such tests are carried out without informed consent, they constitute assault and are a form of inhuman and degrading treatment.⁹⁰

Krishna, who said she was detained by the police for 12 days after alleging being raped, had to undergo this examination:

The doctor asked me to lie down on a table and remove my clothes. When she examined me she inserted a single finger inside me. It hurt and I was scared. I did not like what the doctor was doing to me. She then said something like, “Oh it was just a small rape, it's no big deal.”⁹¹

Case of a Three-year-old in Bengaluru

Sara, an Indian national, suspected her husband of raping and sodomizing their three-year-old daughter in June 2012, in their home in the southern city of Bengaluru. This case illustrates both poor behavior by medical examiners and police harassment of a complainant.

Based on her suspicions, Sara first took her child for an examination at a private hospital, which runs its own “child response unit,” where she said doctors found evidence of abuse, including traces of sperm. Following this, she then took the case to the police, attracting a huge amount of media interest. Her husband, who says he is innocent, was arrested.

⁸⁸ Dr. Harish Pathak, a professor of forensic medicine in Mumbai, told Human Rights Watch that “the two-finger test is not scientific. What is scientific? Scientific evidence is that which is objective, and when the test is repeated by anyone, then the same results will be achieved. The two-finger test is a subjective test. There are many variables.” See Human Rights Watch, *Dignity on Trial*.

⁸⁹ Ministry of Women and Child Development, Government of India, “XII Five Year Plan Report of the Working Group on Women’s Agency and Empowerment,” February 12, 2012, http://planningcommission.nic.in/aboutus/committee/wrkgrp12/wcd/wgrep_women.pdf (accessed June 6, 2012), p. 34.

⁹⁰ Human Rights Watch, *Dignity on Trial*.

⁹¹ Human Rights Watch interview with Krishna (pseudonym), August 15, 2012.

The police insisted that the child be seen by doctors in a government hospital, who in contrast to the behavior of doctors at the private hospital failed to handle the case in a sensitive manner. Sara told Human Rights Watch that hospital authorities, instead of keeping her in a separate room, made the child wait for several hours in an adult labor ward. The sight of blood and women in pain was terrifying for the child. The doctor was also insensitive:

It was very difficult for my daughter. They pulled her legs back and she screamed. I was holding her head. It was very stressful. Even I was screaming. When they finally got the swabs they needed the doctor dropped them on the floor. She picked them up and just looked at them. “This is vaginal, this is anal,” she said. It was horrible. The doctor was very young. I don’t think she knew much about rape. She kept asking if there was any bleeding, if she had a problem walking. For six to eight hours after the examination, my daughter did not urinate because it was hurting her so much after they pulled her legs back.⁹²

Sara also complained about the behavior of the police, who she said had initially been supportive. Later, she was questioned by a group of six male and two female officers for more than four hours. They accused her of having many lovers and of only staying with her husband because of his well-paid and prestigious job. They told her she should have gone to a marriage counselor rather than report the case to them and criticized her for taking the child to the private hospital. They asked her to describe her own sexual experiences as a child and threatened to arrest her. She said:

I am now scared of the police. Everything you say can be used against you. I understand why so many women commit suicide. Here is a case of sodomy and rape. There is proof. But this is how they are dealing with it. It is scary.⁹³

Sara’s husband is currently on bail, awaiting trial. He denied the accusations and has given a television interview saying he was framed.⁹⁴

⁹² Human Rights Watch telephone interview with Sara (pseudonym), Bengaluru, August 10, 2012.

⁹³ Ibid.

⁹⁴ Rohini Swami, “French diplomat Pascal Mazurier speaks out,” interview, *Headlines Today*, January 13, 2013, <http://www.istream.com/news/watch/260734/French-diplomat-Pascal-Mazurier-speaks-out> (accessed January 14, 2013).

Case of Radha

Radha, 15, says that an improperly conducted medical examination in Varanasi after she was repeatedly raped in February and March 2012 is impeding her legal case.⁹⁵

Radha told Human Rights Watch that her abuser was the owner of a brick kiln factory in Uttar Pradesh, where she was forced to work as his maid for two months. Radha, who is originally from a tribal community in Jharkhand state, is among India's vast population of trafficked children, who are especially vulnerable to sexual abuse.⁹⁶ She told Human Rights Watch:

I was with my family when a woman called Shanti visited us and told me to come with her. She was from the same village so I trusted her. She said she was going to take me to a fair. But this woman had tricked me and forced me to go to the brick kiln factory. There I had to work for the owner, doing his cooking and cleaning, and also massage him. Two days after I arrived he forced himself on me. He used to give me a tablet, then he would force himself on me. My room was next to where the owner worked and every time he wanted me, he would come to my room. He would come two or three times a day. I told that woman Shanti that I didn't like it, and she said that "If you tell anyone, the owner will kill you." One day I opposed it, and the owner beat me up brutally. I was so scared. The brick kiln owner was in his sixties, had no teeth, used to drink a lot, and force me to drink alcohol as well. When I refused, he used to hit me. I'm still in pain from the rapes.⁹⁷

After two months there, in March 2012, Radha was able to escape and eventually make it to Varanasi where she was assisted by the People's Vigilance Committee for Human Rights (PVCHR). They took her to the police and to a hospital, where a doctor carried out a medico-legal "two-finger test."

⁹⁵ Human Rights Watch interview with Radha (pseudonym) Varanasi, May 9, 2012.

⁹⁶ Under the Integrated Child Protection Scheme (ICPS), the Indian government has pledged to set up a system and website for tracking trafficked and missing children. This is not yet operational and currently it is not known how many such children there actually are. See Ministry of Women and Child Development, "The Integrated Child Protection Scheme," p. 23-24.

⁹⁷ Human Rights Watch interview with Radha (pseudonym).

On the basis of this degrading and unscientific test, the doctor stated that Radha had not been raped.⁹⁸ As a result, the police have refused to listen to her complaint and investigate the man she said had raped her repeatedly.

Radha, with the support of PVCHR, is challenging the doctor's findings. In September 2012 the police in her home district in Jharkhand agreed that Radha's testimony could form the basis of a charge against her alleged assailant.⁹⁹

The Courts

Victims of child sexual abuse and their families face the prospect of a judicial process that can drag on for years. Court proceedings in India generally are a long and trying ordeal. In child sexual abuse cases, where the burdens of testifying repeatedly and over long periods of time fall on already traumatized children as well as parents, the complainants end up feeling battered by the process, in some cases leading them to withdraw their complaints. Kajol Menon, former executive director of the Childline India Foundation, says the judicial process can be traumatic:

Convictions are rare and the court process is so terrible that most children and their families don't want it. By coming out in public, the children are sometimes seen by the rest of the community not as the victim but actually as the perpetrator, [whereas what] they really need [is] a sympathetic hearing.¹⁰⁰

Special "child courts," as envisaged by the new Protection of Children from Sexual Offenses Act, should make a big difference. Maharukh Adenwalla, a high court lawyer in Mumbai who specializes in child rights, says that they will help create a specialized body of professionals who will understand the sensitivities of such cases:

This is most necessary as often the system, such as the police and judges, do not recognize that the person before it is a child and not an adult, and

⁹⁸ Medico-legal report, details withheld. On file with Human Rights Watch.

⁹⁹ Police First Information Report, details withheld. On file with Human Rights Watch.

¹⁰⁰ Human Rights Watch telephone interview with Kajol Menon, former executive director of the Childline India Foundation, July 18, 2012.

requires to be handled differently, and that the child's evidence requires to be collected and weighed differently.¹⁰¹

Case of Nandini

Nandini was abducted from her home at the age of 11 in 1991, but the courts only delivered a verdict in the case in 2011. Five local men were accused of raping, sodomizing, and forcing her into oral sex. The court eventually found them guilty of abducting and molesting Nandini but acquitted them of the other charges because of the lack of evidence. They were each sentenced to five years in prison.¹⁰²

That there was any trial and verdict at all was due to the perseverance of Nandini's mother, Aarti, a middle-aged woman living in a slum in north Delhi. She says she woke up in the middle of one night in 1991, found her daughter missing, and ran out in search. Aarti says she came across Nandini close to their dwelling, surrounded by men. She said her daughter was "reeking of booze and naked."¹⁰³

Aarti told Human Rights Watch that she pursued her daughter's case because she thought it was the only way to stop the men attacking her daughter again. She struggled to get the police to take the complaint seriously and had to go to four different hospitals before one was prepared to fully examine her child. Doctors in a private and then a government hospital said they did not want to get involved in a criminal case, while those in the third, another government hospital, said they did not have any female staff available at the time to look at her.¹⁰⁴

The police refused to file a case against Nandini's assailants, so Aarti, in 1996, took it to the Delhi High Court.¹⁰⁵ Eventually, in 2002, it ruled in her favor, ordering the police to register a criminal case and directing India's top police force, the Central Bureau of Investigation, to take on the case. Their investigation reached its conclusion in 2011 with the conviction and sentencing of the men, although only on the lesser charges. The judge

¹⁰¹ Human Rights Watch email interview with Maharukh Adenwalla, lawyer, July 18, 2012.

¹⁰² *CBI v. Sanjay Chauhan*, Tis Hazari Courts, New Delhi, March 3, 2012.

¹⁰³ Human Rights Watch interview with Aarti (pseudonym), New Delhi, July 25, 2012.

¹⁰⁴ *CBI v. Sanjay Chauhan*, Tis Hazari Courts.

¹⁰⁵ Delhi High Court Order, CrI.W.No.648/96, details withheld, March 5, 2002.

said that one reason why they could not be convicted of rape was that “much of the medical evidence was lost on account of the delayed investigation.”¹⁰⁶

The long legal ordeal had unfortunate consequences for Aarti's family. Because the trial took up so much of their time, their family income was affected. And because they were constantly afraid that the accused men might attack Nandini, one of their sons had to leave school to guard her. Aarti said:

It was very hard. It was a lot of trouble. We were very frightened about leaving my daughter alone. One time those men surrounded our house. They wanted to kill her. We always had to have one family member at home with her. I often had to be in court, my husband was out and my elder son was working, so my younger son had to stay with her. We had to pull him out of school in Class 9 [aged 14].¹⁰⁷

Case of Amrita

After three years and 18 court appearances, Amrita still has no idea when her ordeal will be over.

In December 2009 the 14-year-old was admitted to a hospital in Bengaluru with 23 burns, bruises, and cuts to her body. She told doctors that the young couple that employed her as a maid used a rolling pin and a frying pan to beat her up.¹⁰⁸ She also accused the husband, who worked for an information technology company, of molesting her on many occasions. She alleged that every night he made her stand naked next to his desk, while he worked on his computer.¹⁰⁹ Amrita was moved to a residential care facility, and her employers were arrested on charges relating to the physical abuse.

According to Sheila Devaraj, who now looks after her, Amrita hates going to court because she does not want to be reminded of what happened. Devaraj said:

¹⁰⁶ *CBI v. Sanjay Chauhan*, Tis Hazari Courts.

¹⁰⁷ Human Rights Watch interview with Aarti (pseudonym).

¹⁰⁸ Medical notes of Amrita (pseudonym), details withheld. On file with Human Rights Watch.

¹⁰⁹ Police First Information Report, details withheld. On file with Human Rights Watch.

She says she doesn't want to go so many times to court because she does not want to relive her past. She's now growing into a young teenager and wants to be left alone. All this drags her back. It is totally distressing for her, mentally and emotionally. She is continually asked by her peers at school to explain what happened to her.¹¹⁰

As court cases drag on, victims like Amrita continue to suffer. Their lives are not only disrupted by the many court appearances, but the whole process of having their version of events repeatedly questioned can also be upsetting. The court environment can be intimidating, and Devaraj said that Amrita is scared of being in such close proximity to her alleged attackers.

¹¹⁰ Human Rights Watch telephone interview with Sheila Devaraj, July 21, 2012.

IV. Abuse in Institutional Facilities

One study estimates that 20 million Indian children end up in institutional residential care.¹¹¹ Some are orphans, but most are not. They are placed into care because their parents cannot support them. Others are classified as “juveniles in conflict with the law,” who need to be housed separately. Street children, those rescued from trafficking for labor or sex work, and runaways are all routinely placed in institutions run by the government or by private or religious charities.

The sexual abuse of children left in the care of institutions is disturbingly common. In the first half of 2012, the *Times of India* newspaper reported cases in eight institutions in different parts of the country. Three of them were in Haryana, with others in New Delhi, Karnataka, Goa, West Bengal, and Uttar Pradesh. Alleged abusers were members of staff, older children, and outsiders, including, it is alleged in one case, policemen.

Set up by the government in December 2012 in the wake of the Delhi attack, a committee, headed by Justice J.S. Verma, made several recommendations to address sexual assault and expressed particular concern over the plight of children in residential care institutions.¹¹² “The condition of juvenile homes in the country is pathetic,” Justice Verma said at a press conference after submitting his report to the union home ministry.¹¹³

In almost all the cases below, the accused deny the allegations. Nevertheless, these cases indicate that the current system of registering and monitoring children's residential care institutions is failing.

As with other cases of child abuse, it is likely that most occurrences in institutions are never reported. The former resident of an institution run by a charitable foundation in north

¹¹¹ Chetan Chauhan, “About 20m kids in India orphans: Study,” *Hindustan Times* (New Delhi), July 26, 2011, <http://www.hindustantimes.com/India-news/NewDelhi/About-20-mn-children-in-India-are-orphan-study/Article1-725905.aspx> (accessed May 8, 2012).

¹¹² J. S. Verma, Leila Seth and Gopal Subramaniam, “Report of the Committee on Amendments to Criminal Law,” January 23, 2013, <http://ibnlive.in.com/news/full-text-justice-js-verma-committee-report-on-amendments-to-criminal-law/317383-53.html> (accessed January 24, 2012), p. 202.

¹¹³ “No lower age limit for juvenile delinquents: Justice Verma,” *Indo-Asian News Service*, January 23, 2013, <http://news.webindia123.com/news/Articles/India/20130123/2143129.html> (accessed January 24, 2013).

India said that where he lived, “nobody dared to share their experiences with anybody outside. The general atmosphere was intimidating, scary, and oppressive.”¹¹⁴ He told Human Rights Watch that in his experience both wardens and older children were involved in sexually abusing young boys. In the 15 years he lived there, he said he was not aware of the facility being inspected once. He said:

A child would dare not complain about the wardens, and those older boys were also so intimidating. It had a bullying culture and there were no safeguards. If a warden molested a boy, that boy would be humiliated, a laughing stock.¹¹⁵

Bharti Ali of HAQ: Centre for Child Rights, a New Delhi NGO, said that even when managers become aware of abuse, they have a strong interest in not making it public:

Institutions fear a bad name if something wrong is reported, which in turn affects their funding. Thus there is an unwritten rule that no abuse should be reported and if it does get reported, it must be denied at the very outset.¹¹⁶

Most of the facilities where the allegations were made in 2012 are well-established institutions run either by the government or charities that receive funding from the state. Some are registered under the Juvenile Justice (Care and Protection of Children) Act (2000).¹¹⁷ This supposedly ensures that they are subjected to regular inspections and have to respect certain minimum standards of care, as enforced by the local child welfare committee.

But the law lacks clarity. Some of the facilities where these allegations were made have not registered under the Juvenile Justice Act. One of them has even challenged in court the principle that it should be inspected by child welfare committees.¹¹⁸

¹¹⁴Human Rights Watch interview, name and location withheld, July 23, 2012.

¹¹⁵ Ibid.

¹¹⁶ Human Rights Watch email interview with Bharti Ali, HAQ, July 17, 2012.

¹¹⁷ Juvenile Justice (Care and Protection of Children) Act, *Ministry of Law and Justice, Government of India*, No. 56 of 2000, <http://wcd.nic.in/childprot/jjact2000.pdf> (accessed April 15, 2012).

¹¹⁸ HAQ: Center for Child Rights, “HAQ: Center for Child Rights and the ongoing case of the Orphanage-Arya Anathalaya,” February 16, 2012, <http://www.haqcrc.org/blogs/haqcentre-child-rights-and-ongoing-case-orphanage-arya-anathalaya-new-New> (accessed April 20, 2012).

In fact, the Juvenile Justice Act actually contains no provisions for penalizing organizations or individuals who refuse to register their institutions, and across India there are many institutions (for example, ones linked to schools or religious bodies) that are registered under different laws and many more that are not registered at all.¹¹⁹ What this means is that no one knows how many children's residential care facilities there really are, nor how many children they house and the conditions they live in. Some states are rectifying this. Kerala, in southern India, for instance, has decided to register all institutions, with estimates for the number varying from 200 to 1,000.¹²⁰

Case of Drone Foundation, Haryana

Sita, 12, is a girl living with HIV, whose parents were too poor to look after her. She was placed in a small children's residential facility close to New Delhi, in Haryana's Gurgaon district, which was supposed to provide her with specialized medical care and schooling. According to its website, the goal of the Drone Foundation was to provide children like Sita with "happiness in life."¹²¹

The facility, which housed only 14 children, was run by Sunita Gupta and her 42-year-old son, Ankur Gupta. The children were taught to refer to them as "Aunty" and "Papa" to create a family atmosphere. According to Sita, Ankur Gupta, who is also living with HIV, was anything but a father figure to her. She told a counselor after she left the facility that he used to rape her: "He used to come drunk. He would take me to a room and would say that if I told anybody about this, he would throttle my neck."¹²²

She also said that when she told other people about the abuse, they would slap her. Another girl, Pooja, said that two of the boys staying there also used to do "wrong things" to the girls.¹²³

¹¹⁹ This might be changing because the scandals in 2012 have prompted the Minister of Women and Child Development to propose introducing penalties when the act is next revised. See "WCD Minister meets Officials from Ministries of Home Affairs, Labour, Health and Family Welfare, HRD and NGOs," Information Bureau, Government of India press release, May 1, 2012, <http://pib.nic.in/newsite/AdvSearch.aspx> (accessed May 5, 2012).

¹²⁰ Laxmi Ajai Prasanna, "Government to crack down on illegal orphanages," *Times of India* (Thiruvananthapuram), April 18, 2012, http://articles.timesofindia.indiatimes.com/2012-04-18/thiruvananthapuram/31360769_1_orphanages-child-abuse-child-care (accessed April 20, 2012).

¹²¹ Drone Foundation, accessed April 16, 2012, <http://www.dronefoundation.org/index.html>

¹²² This is an account of what Sita (pseudonym) told counselors after her rescue from the Drone Foundation, New Delhi, January 18, 2012. On file with Human Rights Watch.

¹²³ This is an account of what Pooja (pseudonym) told counselors after her rescue from the Drone Foundation, New Delhi, January 18, 2012. On file with Human Rights Watch.

The abuse at the Drone Foundation came to light in January 2012 after an employee of the facility telephoned Childline, a toll-free helpline for children in distress. Within hours, the facility was raided and the children rescued. The police arrested Gupta and his mother, who asserted they had committed no wrongdoing and had been framed by a disgruntled ex-employee.¹²⁴ Their trial is underway.

Case of Apna Ghar, Haryana

After their rescue, within 24 hours, Sita and the other children from Drone Foundation were presented to the district child welfare committee to decide how and where they should be looked after. Each child welfare committee is supposed to keep a list of government-run and registered privately-run facilities in its area that must follow a set of basic guidelines and be regularly inspected.¹²⁵

In other states, child welfare committees can act as independent watchdogs to ensure that officials carry out this task. But in Haryana, the committees are actually chaired by the same government officers responsible for the inspections.¹²⁶ Haryana is also one of the states that is yet to appoint its own commission for the protection of child rights, so what could be another crucial monitoring mechanism is not in place there.

In Sita's case, the child welfare committee sent her to Apna Ghar, a residential facility in Rohtak district, which was run by a respected charity that also managed the local Childline and other government-funded welfare programs for destitute children, women, and persons with disabilities. Its owner, Jaswanti Devi, was a member of the district's Juvenile Justice Board, which deals with children accused of crimes. In March 2012 she received Haryana's top award for women "role models," and was presented with a large cash prize by the Haryana chief minister's wife.¹²⁷

¹²⁴ "HIV+ man arrested for child sexual abuse," *Times of India*, Jan 20, 2012, http://articles.timesofindia.indiatimes.com/2012-01-20/delhi/30646794_1_sexual-abuse-hiv-man-minor-girls (accessed April 19, 2012).

¹²⁵ Haryana Juvenile Justice (Care and Protection of Children) Rules, *Social Welfare Department, Haryana Government*, 2002, <http://socialjusticehry.nic.in/jjrules.pdf> (accessed April 15, 2012).

¹²⁶ *Ibid.*

¹²⁷ "46 women achievers felicitated," *The Tribune*, March 26, 2012. <http://www.tribuneindia.com/2012/20120327/haryana.htm> (accessed April 15, 2012).

However, as it turned out, Sita had landed in yet another abusive situation. Three months after she was placed there, Childline in New Delhi received a call from three residents of Apna Ghar who had managed to escape so they could report the abuse that they had suffered. Vinod Tikoo, a member of the National Commission for the Protection of Child Rights, then led an inspection team to interview Jaswanti Devi and many of the children. Tikoo told Human Rights Watch:

I rushed there immediately and reached at about 8:30 p.m. I called the local administration and told them to be there too. We interacted first with Jaswanti. Then I spoke to the children and they started to tell me what had been going on. It was insane, unbelievable. It would baffle anybody's mind.¹²⁸

Tikoo discovered that Sita and five other girls sent to Apna Ghar from the Drone Foundation had been ordered to work as cleaners.

Other children, who had been at the facility longer, complained of being sexually abused by Jaswanti, her son-in-law Jai Bhagwan, and other members of staff. Some of the alleged abuse was extremely violent.¹²⁹ One of the girls later told reporters that “there used to be beatings and ill treatment. They would do bad things. She used to beat some people naked. Some were hung from the ceiling fan and beaten by her. Others were tied to their bed or the window grill.”¹³⁰ Another told inspectors that “they made us do such disgusting things. I felt so dirty that even the water I drank afterwards tasted like it had been contaminated.”¹³¹

A committee of lawyers was appointed by the Haryana High Court to interview the 101 children and women at the residential facility. They heard complaints that some were forced to have sex with policemen and other strangers. Five “grown-up girls” said for example that they were sexually molested, as ordered by Jaswanti, at the hands of Jai Bhagwan, her driver Satish, policemen, and outsiders. Some were forced to have abortions, by taking unknown tablets and inserting foreign objects in their vaginas.¹³²

¹²⁸ Human Rights Watch interview with Vinod Tikoo, member of the National Commission for the Protection of Child Rights, New Delhi, June 1, 2012.

¹²⁹ Ibid.

¹³⁰ Interview with several journalists, recorded by CNN-IBN, June 8, 2012. On file with Human Rights Watch.

¹³¹ Interviews with girls at the institution, recorded by the National Commission for the Protection of Child Rights. On file with Human Rights Watch.

¹³² High Court of Punjab and Haryana, “Court Committee Report”, June 12, 2012. On file with Human Rights Watch.

Tikoo said the Haryana state government could and should have discovered this abuse much earlier:

The mechanism of monitoring the facilities has actually entirely failed in the state of Haryana. If anybody did go there they just stayed confined to the corridors and didn't interact with the children. It is not neglect. It is systemic failure.¹³³

After the raid, Apnar Ghar was closed down by the state authorities, and the children and women shifted to other residential facilities in the state. Under the instruction of the NCPCR, the government then launched a series of initiatives to improve the protection of children in institutions in Haryana.¹³⁴ The NCPCR said that it approved of some of these measures. However, it was still concerned about the children. “We are not happy with how they have dealt with the children, moving them around without verifying those new homes, treating them like they were products,” Tikoo said.¹³⁵

The NCPCR also filed a court case against the Haryana government, as well as those of neighboring Punjab and the union territory of Chandigarh, to get them to establish their own state commissions for the protection of child rights. The commission has also recommended that child welfare committees be properly appointed instead of deputing district officials to the post, who have no training in handling cases involving children.

Jaswanti Devi, her daughter, son-in-law, and six others were awaiting trial at this writing, as was the head of the original police investigation in Rohtak. He has been charged with destroying evidence and for his own alleged role in the sexual abuse.¹³⁶ The investigation has been handed over to the Central Bureau of Investigation, India's top police agency.¹³⁷

¹³³ Human Rights Watch interview with Vinod Tikoo.

¹³⁴ Sukhbir Siwach, “Health cards to inmates of child care institutions in Haryana,” *Times of India*, July 9, 2012, http://articles.timesofindia.indiatimes.com/2012-07-09/chandigarh/32604057_1_ccis-health-and-welfare-child-welfare-officers (accessed July 10, 2012).

¹³⁵ Human Rights Watch telephone interview with Vinod Tikoo, New Delhi, July 21, 2012.

¹³⁶ Deepender Deswal, “Ex-investigator arrested in Rohtak case,” *Times of India*, July 6, 2012, http://articles.timesofindia.indiatimes.com/2012-07-06/chandigarh/32565645_1_shelter-home-rohtak-ranga (accessed July 7, 2012).

¹³⁷ Sanjeev Verma, “High Court directs CBI to complete Rohtak shelter home probe in 2 months,” *Hindustan Times*, July 19, 2012, <http://www.hindustantimes.com/Punjab/Chandigarh/HC-directs-CBI-to-complete-Rohtak-shelter-home-probe-in-2-months/SP-Article1-891769.aspx> (accessed July 20, 2012).

Case of Shivkuti Shishu Grih, Allahabad

The sexual abuse taking place in the Shivkuti Shishu Grih government residential facility for girls in Allahabad, in Uttar Pradesh state, was only discovered by chance. It had been going on for years, but had been successfully covered up. It was exposed in March 2012 when a couple who adopted one of the children found blood in her underwear. The investigation that followed alleged that a watchman, Vidya Bhushan Ojha, had sexually abused seven girls over a period of six to ten years. According to a high court order, the investigation showed that:

[O]ther employees including superintendents, house mothers, cook, class 4 workers such as helpers, nurses, nursery teachers, and sweepers have either facilitated (or at least overlooked) the immoral acts of Ojha, sometimes even after being eye witnesses of this grave crime. In fact their indifference or active concealment is tantamount to their virtual connivance in the crimes of Vidya Bhushan Ojha.¹³⁸

During the investigation, it was found that when some of the girls complained to the superintendent, she ignored them. On one occasion a couple refused to adopt a girl after she told them she had been raped – they took her back to the residential facility, but nothing was done and no one outside the institution was informed.¹³⁹ The Allahabad Child Welfare Committee even used to regularly hold meetings there. But members said they were not aware of what was going on. “Nobody complained to us,” one said.¹⁴⁰

Following the investigation, which was ordered by the Allahabad High Court, the watchman and the institution’s supervisor were arrested. Ten members of staff were suspended pending another inquiry, while three senior officials, including the district’s child protection officer, were transferred out of Allahabad but not otherwise penalized.¹⁴¹

¹³⁸ High Court of Allahabad, Order, Criminal Writ/Public Interest Litigation, No. 4207 of 2012, April 16, 2012, <http://elegalix.allahabadhighcourt.in/elegalix/WebShowJudgment.do> (accessed June 20, 2012)

¹³⁹ Ibid.

¹⁴⁰ Human Rights Watch group interview with members of the Allahabad Child Welfare Committee, Allahabad, May 10, 2012.

¹⁴¹ High Court of Allahabad, Order, Criminal Writ/ Public Interest Litigation No. 4207 of 2012, April 16, 2012.

The judges said the cover up of sexual abuse had demonstrated that “government servants across the board ... have lost the capacity to do any work or to assume responsibility; their conscience appears to have died.” They also criticized the “indifference” of senior officials and child welfare committees for simply “passing orders in a mechanical and bureaucratic manner, with no sense of mission.”¹⁴²

Case of Church of Christ Home for Needy Children and Widows, Bengaluru

A boy living in the Church of Christ Home for Needy Children and Widows called Childline in February 2012, prompting an inspection by Bengaluru's relatively strong child protection institutions, namely the Karnataka Commission for the Protection of Child Rights, the police, and a child welfare committee.¹⁴³ According to the commission, the inspectors interviewed the 42 children, “all of whom without exception, reiterated details of the physical abuse inflicted on the boys and girls” by the facility’s manager and “the molestation of the older girl inmates” by a board member, who was also the manager's father. They also saw children with “welt marks and bruises.”¹⁴⁴

After the raid, the child welfare committee moved the children to other registered institutions in the city or reunited them with their parents. The two men were arrested, and counselors spoke to the girls who said they had been sexually abused.¹⁴⁵

The subsequent investigation found that the institution, which had been operating for 20 years and was funded by donors in the United States, was not registered with the government under the Juvenile Justice Act. According to the Karnataka Commission for the Protection of Child Rights, it was in breach of several of the act's rules regarding standards of care and management processes.¹⁴⁶ For example, when parents or guardians admitted their child to the facility they had to agree not to visit the child until

¹⁴² Ibid.

¹⁴³ Karnataka State Commission for the Protection of Child Rights, Interim order, March 14, 2012. On file with Human Rights Watch.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Each state can draw up its own rules for this. For the Karnataka Juvenile Justice Rules, see Juvenile Justice (Care and Protection of Children) Karnataka Rules, *Karnataka Government*, 2010, http://dwcdkar.gov.in/index.php?option=com_docman&task=doc_details&gid=36&Itemid=281&lang=en (accessed June 15, 2012).

he or she was released at the age of 18.¹⁴⁷ This is contravention of the law, which states that parents have the right to visit their child at least once a month, except where they have been found responsible for subjecting him or her to violence, abuse, or exploitation.¹⁴⁸

Although the facility is not registered under the Juvenile Justice Act, the organization that runs it is a legal entity in India. According to the investigation, it is a registered society, with permission from the Indian Ministry of Home Affairs to receive funding from abroad. The organization runs two other children's residential care institutions in southern India, holds church services, and operates several Bible colleges.¹⁴⁹

The organization's treasurer, Prabhu Vara Kumar, told Human Rights Watch that the allegations of physical and sexual abuse were not true and were being exploited by enemies of the Christian organization, including a property developer and right-wing Hindus. Kumar said, "When you keep children you sometimes need to discipline them. They said they were mistreated, but this was not the case."¹⁵⁰

At the time of writing, the trial was underway.

Case of Arya Anathalaya, New Delhi

Uma had placed her daughter in the Arya Orphanage because she was too poor to properly care for her.¹⁵¹ Uma's husband was an alcoholic who had abandoned the family. Since the Arya Orphanage was a well-known New Delhi institution with over a thousand children, run by a charitable foundation headed by a senior lawyer, Uma thought her daughter would be better off there. She was confident she would be safe and receive a proper education.

But by the time Uma found out that something was wrong with her daughter, the 11-year-old was already dead. She had died of diarrhea, 15 days after falling sick in the residential care

¹⁴⁷ Karnataka State Commission for the Protection of Child Rights, Interim order.

¹⁴⁸ Juvenile Justice (Care and Protection of Children) Karnataka Rules, rule 61.

¹⁴⁹ Karnataka State Commission for the Protection of Child Rights, Interim order.

¹⁵⁰ Human Rights Watch telephone interview with Prabhu Vara Kumar, treasurer of Church of Christ Home for Needy Children and Widows, July 23, 2012.

¹⁵¹ Human Rights Watch interview with Uma (pseudonym), New Delhi, June 6, 2012.

facility where she had lived for three years. After her death a post-mortem revealed the girl had been subjected to repeated vaginal and anal sexual abuse.¹⁵²

The police sent officers into the facility to investigate and invited child rights experts from a New Delhi-based NGO, HAQ: Centre for Child Rights, to help with the children's interviews. On the basis of these interviews, as well as separate visits by the local child welfare committee, the police filed charges against a 15-year-old boy and a watchman for raping the girl.¹⁵³ A second case, involving the alleged sexual abuse of an 11-year-old boy was also reported, and the chief warden and another warden were arrested.¹⁵⁴

But the team from HAQ said they had heard many other “heart-rending stories of physical abuse, mental cruelty, and sexual abuse ranging from eve-teasing [i.e. sexual harassment] and molestation to rape and sodomy,” which indicated that these were not isolated cases. They became concerned that the children who made these allegations were still living in the facility and at the mercy of its staff.¹⁵⁵ The local child welfare committee also directed the police to file charges not just against the alleged perpetrators for their crimes, but also against the people running the facility for “neglect.”¹⁵⁶

However, a week after the investigations began the management barred the team from HAQ from entering, on the grounds that the institution did not have to submit to such inspections.¹⁵⁷ The management strongly denied any of the allegations of wrongdoing. “It is only this boy who has been apprehended and against whom there is proof that such acts took place inside the walls of the orphanage. Just because of him, the whole

¹⁵² Child Welfare Committee of New Delhi and Central Delhi, “Inspection Report of Arya Orphanage,” February 1, 2012. On file with Human Rights Watch.

¹⁵³ HAQ: Center for Child Rights, “HAQ: Center for Child Rights and the ongoing case of the Orphanage-Arya Anathalaya,” February 16, 2012, <http://www.haqrc.org/blogs/haqcentre-child-rights-and-ongoing-case-orphanage-arya-anathalaya-new-New> (accessed April 20, 2012).

¹⁵⁴ Neeraj Chauhan, “Chief warden, 2 others, held for orphanage abuse,” *Times of India*, February 19, 2012, <http://timesofindia.indiatimes.com/city/delhi/Chief-warden-2-others-held-for-orphanage-abuse/articleshow/11946056.cms> (accessed April 9, 2012).

¹⁵⁵ HAQ: Center for Child Rights, “HAQ: Center for Child Rights and the ongoing case of the Orphanage-Arya Anathalaya.”

¹⁵⁶ Child Welfare Committee, “CWC Directions in the matter of children in need of care and protection at Orphanage Home, Arya Anathalaya, Daryaganj, New Delhi,” February 13, 2012. On file with Human Rights Watch.

¹⁵⁷ HAQ: Center for Child Rights, “HAQ: Center for Child Rights and the ongoing case of the Orphanage-Arya Anathalaya.”

institution is being blamed,” Viresh Pratap Chaudhry, president of the Arya Orphanage told reporters.¹⁵⁸

The management contended in the Delhi High Court that the child welfare committee had no authority over it.¹⁵⁹ Meanwhile the juvenile accused of sodomizing another boy in the Arya orphanage has been convicted for that offence, while in the case of the girl who died (where he was also being tried as an accused), the decision was pending at the time of writing. The warden accused in the case received bail and continues to be employed by the orphanage management in another location.

According to Anant Asthana, an expert on juvenile justice, this case demonstrates ambiguities in the Juvenile Justice Act that need to be resolved. The Juvenile Justice Rules applicable in Delhi do not clearly explain the implications of residential child care institutions being “registered,” “licensed,” or “recognized” under the law. Nor, he says, do they clearly explain monitoring mechanisms applicable in various institutions. As a result, he says, “the existing laws on residential child care institutions leave scope for considerable confusion and possible manipulation.”¹⁶⁰

The Anchorage Shelter Home

Securing justice in cases of child sexual abuse that involves foreign nationals is especially complicated.

The Anchorage Shelter Home was set up in Mumbai in 1995 by a former officer of the British Royal Navy, Duncan Grant, for boys begging at the Gateway of India, the city's main landmark. Grant had been a regular visitor to India for years and was well-known to social workers like Sangeeta Punekar. She remembers seeing him at Mumbai's main train station in 1989-90, picking up sick homeless children and taking them, sometimes in a handcart, to hospital. She started to become suspicious of him when she saw what he used to give the boys:

¹⁵⁸ “Orphanage management denies sexual abuse charge,” *The Hindu*, February 14, 2012, <http://www.thehindu.com/news/cities/Delhi/article2891787.ece> (accessed April 9, 2012).

¹⁵⁹ Utkarsh Anand, “Arya Orphanage case: HC censures govt-appointed administrator,” *Indian Express*, March 29, 2012, <http://www.indianexpress.com/news/arya-orphanage-case-hc-censures-govtappointed-administrator/929879/0> (accessed April 9, 2012).

¹⁶⁰ Human Rights Watch interview with Anant Asthana, juvenile justice expert, New Delhi, July 21, 2012.

He used to give them bizarre gifts like Ray Ban sunglasses and mobile phones, which were a huge luxury at the time. It was very striking and strange behavior, and I was very curious about what he was up to. But he said he was a just a tourist, working in the navy, who was fond of children.¹⁶¹

In 2001 the first formal accusations against Grant were made. Childline received a call that Grant and a former navy colleague and regular visitor to the facility, Allan Waters, were sexually abusing boys at the shelter. A journalist living in Colaba heard similar stories and informed Maharukh Adenwalla, a high court lawyer specializing in child rights. When the police initially refused to record the statements of the children, the activists wrote down the details themselves.¹⁶²

Both Grant and Waters left the country when they learned of the allegations. For the first time in a case of child sexual abuse, India then used Interpol to have them extradited. Grant was found in Tanzania where he ran three more children's residential facilities, and Waters was arrested arriving at a New York airport. In 2006 a lower court sentenced the two men to six years in prison. One of the boys told the court:

Duncan had sex with me on many occasions. He used to tell me to hold his penis and also he used to hold my penis. This must have taken place at least on 20 to 25 occasions ... Allan Waters also had sat with me on many occasions. He also used to tell me to hold his penis and he also used to hold my penis."¹⁶³

The men maintained their innocence and the British charity, Fair Trials Aboard, campaigned on their behalf, asserting that the accusations were motivated by revenge, and witnesses had been paid.¹⁶⁴ The men appealed to the Bombay High Court, which in 2008 ordered their release on the grounds that the statements of the two main witnesses were not consistent and had not been corroborated by the many other children who had

¹⁶¹ Human Rights Watch interview with Sangeeta Punekar, social worker, Mumbai, May 30, 2012.

¹⁶² *Childline India Foundation v. Allan John Waters*, Supreme Court of India, March 18, 2011, <http://childlineindia.org.in/pdf/SC-judgement-anchorage-case.pdf> (accessed August 6, 2012).

¹⁶³ *Ibid.*

¹⁶⁴ "Cleared sex case Britons released," *BBC News*, July 30, 2008, http://news.bbc.co.uk/2/hi/south_asia/7532662.stm (accessed April 9, 2012).

passed through the shelter. The judges also said that since the boys had not tried to run away during the years they claimed they were being abused, this indicated it had not happened.¹⁶⁵ They stated as well that the sexual acts described by the boys (including oral sex) were not necessarily illegal under section 377 of the Indian Penal Code that outlawed “carnal intercourse against the order of nature,” which they considered to mean penetrative anal sex.¹⁶⁶

Childline's subsequent appeal to India's Supreme Court argued that, “the Ld. judges have completely ignored the fact that the victims of sexual abuse were vulnerable and defenseless street children, who were so desperate to get a roof over their heads that they were prepared to put up with the sexual abuse.”¹⁶⁷

Three years later, in 2011, the Supreme Court agreed, overturned the High Court ruling, and sent the men back to prison.¹⁶⁸

¹⁶⁵ *Allan John Waters and Duncan Grant v. the State of Maharashtra and Maharukh Adenwalla*, Bombay High Court, July 23, 2008, <http://childlineindia.org.in/pdf/Anchorage-Case-High-Court-Judgement.pdf> (accessed May 10, 2012).

¹⁶⁶ As discussed below, many acts of child sexual abuse were neither defined nor outlawed in India until the Protection of Children from Sexual Offences Act was passed in 2012. Previously, when boys were abused, prosecutors would often turn to section 377 of the Indian Penal Code. This was a British-era law that banned sodomy, defined as “carnal intercourse against the order of nature.” Lawyers and judges have since debated whether or not this definition also covers non-penetrative or oral sex. The Bombay High Court ruled that it did not. See *Allan John Waters and Duncan Grant v. the State of Maharashtra and Maharukh Adenwalla*, Bombay High Court.

¹⁶⁷ Childline India Foundation, “Anchorage case history,” <http://childlineindia.org.in/anchorage-case-history-updated.htm> (accessed May 10, 2012).

¹⁶⁸ See *Childline India Foundation v. Allan John Waters*, Supreme Court of India.

V. Efforts to Ensure Child Protection

December 2012 marked 20 years since India ratified the Convention on the Rights of the Child. Since ratification, the government has adopted various measures to improve the well-being of the country's children, drawing up new laws and launching major initiatives to improve health, education, and the protection of vulnerable children. But implementation, to ensure these laws and initiatives make a difference on the ground, remains a challenge.

Protection of Children from Sexual Offences Act

In May 2012 a major step forward was taken when India's parliament enacted its first law specifically outlawing child sexual abuse.¹⁶⁹ Until then, no legal definitions of child sexual abuse even existed.

Before the Protection of Children from Sexual Offences Act was passed, different forms of abuse were inadequately covered by laws that were not designed to address them. For example, if a girl suffered non-penetrative sexual abuse, the perpetrator could be charged with “assault with intent to outrage the modesty of a woman.”¹⁷⁰ If a boy was abused, then the attacker could be charged under the colonial-era anti-homosexuality law that criminalized “carnal intercourse against the order of nature.”¹⁷¹ But this would only happen if the police or prosecutor thought the law could cover non-penetrative sexual acts, which was not always the case.¹⁷²

There were also contradictions over the age at which a person could legally have sex and marry.¹⁷³ Boys were only allowed to marry once they reached the age of 21, but their age of sexual consent was not defined until this new law was passed, when it was set for

¹⁶⁹ “Parliament clears bill against child abuse,” *Times of India*, May 23, 2012, <http://timesofindia.indiatimes.com/india/Parliament-clears-bill-against-child-abuse/articleshow/13402687.cms> (accessed May 24, 2012).

¹⁷⁰ Indian Penal Code, No. 45 of 1860, <http://www.vakilno1.com/bareacts/indianpenalcode/s354.htm> (accessed April 15, 2012), sec. 354.

¹⁷¹ “India: Court Strikes Down ‘Sodomy’ Law,” Human Rights Watch news release, July 2, 2009, <http://www.hrw.org/news/2009/07/02/india-court-strikes-down-sodomy-law>.

¹⁷² *Allan John Waters and Duncan Grant v. the State of Maharashtra and Maharukh Adenwalla*, Bombay High Court.

¹⁷³ HAQ: Centre for Child Rights, “Twenty Years of CRC: A Balance Sheet – Volume II,” 2011, http://www.haqcrc.org/sites/default/files/CRC20BS_Vol%20II_o.pdf (accessed April 18, 2012), p. 80-81.

both boys and girls at 18. Previously, girls could only marry at 18, while the Indian Penal Code set their age of consent as 16, unless they were married, in which case it was, confusingly, 15.¹⁷⁴

Most child rights experts have welcomed the Protection of Children from Sexual Offences Act as a major step forward, though they do have concerns with some issues. Many believe that the government should be prepared to bring in amendments to improve the law within two or three years, once the Ministry of Women and Child Development and its civil society partners have had the time to assess its implementation.

Among the law's strengths are clear definitions of child sexual abuse, including a definition of aggravated assault, applicable in situations in which the attacker is in a position of authority over the child (for example, a policeman or the manager of a residential care facility). The law sets forth rules that the police must follow when interviewing victims so that they are treated with sensitivity. It also provides for the setting up of special courts to exclusively deal with child sexual abuse cases.¹⁷⁵ The law forbids the aggressive questioning of a child during trial, includes measures to protect his or her identity, and orders that the court complete its work within a year.¹⁷⁶

Experts have criticized several features of the new law. In particular, experts are concerned that 18, the new age of consent, is unrealistically high. Kamini Lau, a New Delhi-based judge who handles cases of sexual violence, has said that "the proposed increase in the age of consent would become regressive and draconian as it tends to criminalize teenage, adolescent sex."¹⁷⁷

Another concern is over mandatory reporting. The law says that if people are aware of an incident of child sexual abuse, or think that there might be risk, they must inform the

¹⁷⁴ Indian Penal Code, No. 45 of 1860, <http://www.indiankanoon.org/docfragment/623254/?big=2&formInput=sec+375+ipc> (accessed April 15, 2012), sec. 375.

¹⁷⁵ Protection of Children from Sexual Offences Bill, May 2011, <http://www.prsindia.org/uploads/media/Protection%20of%20children/Protection%20of%20children%20aga inst%20sexual%20offences%20bill%202011.pdf> (accessed June 6, 2012).

¹⁷⁶ Ibid.

¹⁷⁷ Press Trust of India, "Centre's Bill on Sexual Offences is 'regressive': Delhi Court," *NDTV*, May 13, 2012. <http://www.ndtv.com/article/india/centre-s-bill-on-sexual-offences-is-regressive-delhi-court-210149> (accessed May 13, 2012).

police or face up to six months in prison and a fine.¹⁷⁸ It is far from clear how this will work in practice and how it will be enforced. Child rights groups had campaigned for mandatory reporting to be confined to professionals who come into contact with children, such as doctors or teachers, but even in those cases it would be hard to implement.

Also of concern is that the law states that “where the victim is a child below the age of sixteen years” the court shall presume that the accused “has committed the offence, unless the contrary is proved.”¹⁷⁹ Some child rights groups argue that this is only an extension of the current laws governing rape where a conviction can be secured on the basis of the victim’s testimony alone. Anant Asthana, a child rights lawyer, says this provision is an acknowledgement that “to expect a child to prove its abuse and bring evidence is too much to expect.”¹⁸⁰ However, this provision appears to violate the right to presumption of innocence under both Indian law¹⁸¹ and the International Covenant on Civil and Political Rights.¹⁸² Finally, the law says little about providing more sensitive medical examinations for victims or the need to provide them with care, treatment, and rehabilitation.

Future amendments of the law should address these key issues.

However, the above concerns notwithstanding, there is hope that if the new law results in more prosecutions, then more victims will be encouraged to report their abuse, and potential attackers will be deterred from abusing children. It is essential that the law is understood and respected by police officers, government officials, and courts across the country. It will be the job of the national and state commissions for the protection of child rights to oversee this, and so it is essential that they be given sufficient resources and manpower. The government also needs to draw up appropriate training programs.

¹⁷⁸ Protection of Children from Sexual Offenses Bill, May 2011.

¹⁷⁹ *Ibid.*, sec. 29.

¹⁸⁰ Human Rights Watch telephone interview with Anant Asthana, September 19, 2012.

¹⁸¹ India’s Supreme Court has consistently described the presumption of innocence as a human right. See, *Narendra Singh and Anr. v. State of Madhya Pradesh*, 2004, <http://www.indiankanoon.org/doc/496676/> (accessed June 6, 2012).

¹⁸² International Covenant on Civil and Political Rights (ICCPR) adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316(1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 14 (2).

National and State Commissions for the Protection of Child Rights

The National Commission for the Protection of Child Rights is a relatively new institution. Along with its equivalents in some of India's states, it is playing a key role in improving the status of children across India. With more funding, more support from the central government and better trained staff, it could do a lot more.

Set up in 2007 the NCPCR proposes new legislation, analyzes existing laws and policies, and investigates suspected incidents where children's rights are violated. It can initiate its own investigations or follow up cases referred to it by individuals who feel that their complaints or problems are not being properly addressed by government officials or the police. The commission has quasi-judicial powers and can summon and examine any person under oath.¹⁸³

These powers can be used to great effect. For example, the commission in 2012 led the investigation into the sexual abuse of children at several residential institutions in Haryana. The cases in Haryana amounted to a "systemic failure of the state" according to Vinod Tikoo, the investigator leading the enquiries.¹⁸⁴ He summoned top officials and the police chief to explain what had gone wrong and gave detailed instructions for dealing with the situation. "They have to listen to us," he said. "They have no choice."¹⁸⁵

Tikoo believes that the commission, within a short period since its establishment, has proved itself to be "vibrant and dynamic," though he admits it could be more effective with more "back up and manpower," including a special investigations cell and in-house lawyers. NCPCR Chairperson Shantha Sinha said that the commission did not always have the capacity to follow up on complaints sent by individual petitioners.¹⁸⁶

State governments are also expected to set up their own commissions. However, only 15 states and union territories have formed them.¹⁸⁷ They have powers to recommend but not

¹⁸³ The Commissions for the Protection of Child Rights Act, *Ministry of Law and Justice, Government of India*, No. 4 of 2006, http://www.ncpcr.gov.in/Acts/National_Commission_for_Protection_of_Child_Rights_Act_2005.pdf (accessed April 15, 2012).

¹⁸⁴ Human Rights Watch interview with Vinod Tikoo, New Delhi, June 1, 2012.

¹⁸⁵ *Ibid.*

¹⁸⁶ Human Rights Watch interview with Shantha Sinha, New Delhi, July 25, 2012.

¹⁸⁷ "19 states, UTs yet to set up panel to protect child rights," *Times of India*, January 4, 2013,

to implement and so can be ignored. Nina Nayak, the former chairperson of the Karnataka commission, complained that “a bureaucrat once told me that when they receive my recommendations, they just throw them in the dustbin.”¹⁸⁸

Another problem is that state commissions are not truly autonomous bodies, as envisaged by the law. The state governments control their funding, and often appointments are not transparent. The commissions in some states, such as Rajasthan and Odisha,¹⁸⁹ are actually staffed by serving government officials.¹⁹⁰

At the same time, their role as independent monitors of government action is more important than ever. They have recently been charged with the massive job of monitoring the implementation of India's landmark Right to Education Act, which compels state governments to provide free education in neighborhood schools to all 6 to 14-year-olds, and contains important provisions on child protection.¹⁹¹

The government has also tasked the commissions to monitor the implementation of the Protection of Children from Sexual Offences Act. Shantha Sinha, the NCPCR chairperson, told Human Rights Watch that this required extra support from the government:

For this they also must support a separate division, a research group to look at and study cases that are not reported as well as those that are reported. We'll need to look at compliance and be in touch with the whole criminal justice system. It cannot be part of our routine activity.¹⁹²

The Integrated Child Protection Scheme

Following the publication of its survey of child abuse, the Ministry of Women and Child Development, in 2009, launched the largest ever initiative to improve child protection

http://articles.timesofindia.indiatimes.com/2013-01-04/india/36148272_1_child-rights-uts-union-territories (accessed January 4, 2013).

¹⁸⁸ Human Rights Watch interview with Nina Nayak, Bengaluru, May 24, 2012.

¹⁸⁹ Previously known as Orissa.

¹⁹⁰ HAQ: Centre for Child Rights, “Twenty Years of CRC: A Balance Sheet – Volume II,” p. 64.

¹⁹¹ The Right of Children to Free and Compulsory Education Act, *Ministry of Law and Justice, Government of India*, 2009, http://mhrd.gov.in/sites/upload_files/mhrd/files/free_and_compulsory09.pdf (accessed May 7, 2012).

¹⁹² Human Rights Watch Interview with Shantha Sinha, July 25, 2012.

measures in India, the Integrated Child Protection Scheme (ICPS).¹⁹³ Its goal was to strengthen existing institutions and programs and introduce new ones. The most ambitious of these was a plan to appoint social workers and establish committees in every district of the country to specifically look after the rights of children.

According to a paper released by the ministry, it was necessary to roll out the new scheme because of “major shortcomings and gaps in existing child protection institutions, policies, programs, and their implementation at all levels.” This, it said, was because child protection measures had been allocated “meagre financial resources,” which amounted to only 0.03 percent of total government spending on children from 2004-5 to 2006-7.¹⁹⁴ The result was that “most children in need of care and protection, as well as their families, do not get any support and services,” and the majority of services which do exist are “of poor or extremely poor quality.” The ministry also found that many officials appointed to key child protection services were “inappropriate,” and there was an overall lack of training.¹⁹⁵

Many child protection experts in India have told Human Rights Watch that three years after the launch of the scheme, this situation remains largely unchanged. “The ICPS is a breakthrough in terms of thinking and in terms of highlighting a taboo subject,” one expert said. “The people at the center have devised a good scheme, but those who have to make it operational have no clue.”¹⁹⁶ A child welfare committee member in Uttar Pradesh state complained, “The system only works properly on paper.”¹⁹⁷

The ICPS is by no means the only social welfare program that the Indian government is struggling to implement. Translating good policies into effective action on the ground is one of the biggest challenges facing India today.¹⁹⁸ Government officials in charge of

¹⁹³ Ministry of Women and Child Development, Government of India, “Integrated Child Protection Scheme,” 2009, http://www.indg.in/social-sector/women-and-child-development/the_integrated_child_protection_scheme_icps.pdf (accessed April 20, 2012).

¹⁹⁴ Ibid.

¹⁹⁵ Ibid.

¹⁹⁶ Human Rights Watch interview with child rights activist, name withheld, New Delhi, April 11, 2012.

¹⁹⁷ Human Rights Watch interview with Uttar Pradesh Child Welfare Committee member, name withheld, Varanasi, May 2012.

¹⁹⁸ See Geeta Anand, “India’s Public Health Crisis, the Government Responds,” post to “India Real Time” (blog), *Wall Street Journal*, July 30, 2011, <http://blogs.wsj.com/indiarealtime/2011/07/30/indias-public-health-crisis-the-government-responds> (accessed August 13, 2012) and Ashwin Parulkar, “Starving in India: A fight for life in Bihar,”

welfare programs involving children can be extremely overworked and badly resourced. Narendra Tiwary, a divisional rescue officer in Uttar Pradesh, complained that he has practically no staff to help him and his office does not even have a computer. “The government is not aware of the true reality on the ground, even the state government doesn't understand,” he said.¹⁹⁹

Many difficulties arise simply because India is a huge and diverse country. As a federal state, it is to a large extent administered not by the central government in New Delhi, but by its twenty-eight states and seven smaller union territories. The Ministry of Women and Child Development might actually have designed the ICPS and allocated funds for it, but it is up to the individual states to implement. In a meeting with Human Rights Watch, Minister of State (Independent Charge) for Women and Child Development Krishna Tirath admitted that while her officials could instruct the state governments, they did not always, “respond properly.”²⁰⁰

A government analysis of the scheme at the end of 2011 found that because many states and territories had given such a low priority to child protection, they had been slow to submit proposals for funding from the central government. Once they received it, they were then slow to spend it. In fact, only four states had spent everything they had received during 2010-11. Of the approximately INR 1073 crores (US\$200 million) allocated over five years for the ICPS, only about INR 308 crores (US\$60 million) was spent or earmarked during its first three years.²⁰¹

It would be wrong to blame only the regional governments for this, however. A senior staff member for an NGO working on child rights in several parts of the country said the central government had given states few instructions on how to implement the scheme, and they were unprepared for the task. She said:

post to “India Real Time” (blog), *Wall Street Journal*, April 10, 2012, <http://blogs.wsj.com/indiarealtime/2012/04/10/starving-in-india-a-fight-for-life-in-bihar> (accessed August 13, 2012).

¹⁹⁹ Human Rights Watch interview with Narendra Tiwary, divisional rescue officer, Varanasi, May 8, 2012.

²⁰⁰ Human Rights Watch interview with Krishna Tirath, minister of state (independent charge) for women and child development, New Delhi, July 27, 2012.

²⁰¹ Ministry of Women and Child Development, Government of India. “Report of the Working Group on Child Rights for the 12th Five year Plan (2012-2017),” December 16, 2012, <http://www.wcd.nic.in/reportwgdtdo1032012.pdf> (accessed January 5, 2012).

It's a hell of a job. These departments are already dealing with massive problems. Senior bureaucrats in charge of rolling out the ICPS are often unqualified and untrained. They have no experience of dealing with child rights and are still figuring things out.²⁰²

Another expert said that many civil servants saw child protection as a peripheral issue, much less important than education. He said that the government needed to do much more to train and recruit a dedicated child protection “cadre.” “The whole bureaucracy and political class do not think it is very serious,” he said.²⁰³

The result is that the plan to create a whole new bureaucracy of child protection—including the setting up of state, district, and village-level committees and the appointment of district-level child protection officers—has hardly gotten off the ground.

By contrast, the one element of the ICPS that is not managed by the states has been a relative success. Childline 1098 is run as a partnership of the central Ministry of Women and Child Development and the Childline India Foundation. This NGO launched the service in Mumbai in 1996 as a toll-free helpline for children in distress, and it now operates in more than 200 cities and districts. As of March 2011 it had received a total of 21 million calls.²⁰⁴ Thanks to new funding it received through the ICPS, it has been able to double its coverage area over the past three years.²⁰⁵

In each location, one of 415 local NGOs manages the calls that Childline receives and if necessary can intervene to help children in need. Successful interventions, however, require the support of the police or other government services; without it, staff can spend much of their time trying to get uncooperative or slow-moving officials to take action.²⁰⁶

²⁰² Human Rights Watch interview, name and location withheld, New Delhi, April 11, 2012.

²⁰³ Human Rights Watch interview, name and location withheld, New Delhi, April 16, 2012.

²⁰⁴ “Homepage,” Childline India Foundation, accessed April 20, 2012, <http://www.childlineindia.org.in/1098/1098.htm>.

²⁰⁵ Ministry of Women and Child Development, Government of India. “Report of the Working Group on Child Rights for the 12th Five year Plan (2012-2017).”

²⁰⁶ Human Rights Watch interview, name withheld, New Delhi, May 3, 2012.

The ICPS is still a relatively new program, and it can make a difference. According to the government, although 100,000 children have already directly benefitted from the scheme, “there is still a long way to go for putting in place a strong safety net for children.”²⁰⁷

Child Welfare Committees

Even in India’s wealthier cities, the child welfare committees have inadequate resources to assist the children they are charged with protecting. Raj Mangal Prasad, the chairperson of the Child Welfare Committee for South Delhi—home to India’s government elite—has the task of deciding how vulnerable children in the district should be cared for. He says that while his committee can reasonably cope with 10-15 cases a day, it often has to respond to three times that number. Resources are stretched so thin, he says, “We are crumbling.”²⁰⁸

Child welfare committees are among the most important child protection mechanisms currently in place in India. They are envisaged to be powerful quasi-judicial bodies of experts that oversee the government’s welfare officers and the police, and inspect children’s residential care facilities. The Integrated Child Protection Scheme (ICPS) envisages a dramatic increase in the number of committees. Child rights experts and committee members themselves have told Human Rights Watch that they could do so much more if they were better supported.

Established in 2000 by the Juvenile Justice (Care and Protection of Children) Act, there is supposed to be at least one child welfare committee in each district, funded by the state government.²⁰⁹ Since the launch of the ICPS, funding has been made available to increase the number of committees across the country. But according to a survey by the Childline India Foundation, by early 2012, fewer than half of India’s 640 districts had their own committee.²¹⁰

²⁰⁷ Ministry of Women and Child Development, Government of India. “Report of the Working Group on Child Rights for the 12th Five year Plan (2012-2017).”

²⁰⁸ Human Rights Watch interview with Raj Mangal Prasad, chairperson of the Child Welfare Committee for South Delhi, New Delhi, April 23, 2012.

²⁰⁹ Juvenile Justice (Care and Protection of Children) Act, *Ministry of Law and Justice, Government of India*, No. 56 of 2000, <http://wcd.nic.in/childprot/jjact2000.pdf> (accessed April 15, 2012).

²¹⁰ Childline India Foundation, “Everywhere Child Project,” January 4, 2012, <http://childlineindia.org.in/pdf/The-Everywhere-Child-Protect-Project.pdf> (accessed January 10, 2012).

In some parts of the country, they are well equipped and properly staffed. In Bengaluru, members sit in a large, air-conditioned room and are helped by a data entry clerk on a computer. But in Allahabad, Uttar Pradesh, the committee meets in a tiny and decrepit room with a broken window that it shares with a government worker from another department. There is no privacy for sensitive interviews with abuse victims. Parents and children have to sit on the floor outside, as they wait their turn. This is all in breach of the Juvenile Justice Act Rules which specify that a child welfare committee needs to be “child friendly.”²¹¹ One of the Allahabad members, Anand Agarwal, lamented, “I do think we are making a difference but it's not enough. We do not have staff or the proper facilities to do more.”²¹²

Elsewhere in Uttar Pradesh, committee members complain that government officials, including doctors and the police, ignore them. “Government officials don't understand the CWC and don't respect our orders,” the chairperson of one committee told Human Rights Watch.²¹³ One of his colleagues agreed. “When we give an order they must follow our orders, not give an excuse. But we have little powers to make sure things are implemented,” he said.²¹⁴

The relationships that child welfare committees have with local government officials and the police are key to implementing protection policies. But while their orders need to be respected, there is a danger that if the committees work too closely with the authorities their independence will be compromised. Many child rights experts worry that this is happening all too often, with the result that some committees do not exercise their powers to challenge officials who fail to look after children properly or are covering up abuse. The most sensitive cases involve children's institutional facilities, many of which are run by the same state government departments which fund the committees and appoint their members. Said Bharti Sharma, a former chairperson:

CWC members are often not the right people. They are by and large political appointees. Some happen to be good, but they are not focused on the

²¹¹ Rules under the Juvenile Justice (Care and Protection of Children) Act, *Ministry of Law and Justice, Government of India*, 2007, http://wcd.nic.in/childprot/juvenile%20justice%20_care%20and%20protection%20of%20children_%20rules%202.pdf (accessed April 15, 2012).

²¹² Human Rights Watch interview with Anand Agarwal, Allahabad, May 10, 2012.

²¹³ Human Rights Watch interview, name withheld, Uttar Pradesh, May, 2012.

²¹⁴ Human Rights Watch interview, name withheld, Uttar Pradesh, May, 2012.

children. If you really want to do the right thing for the children, then you have to fight the state government. You have to struggle.”²¹⁵

Rishi Kant, the coordinator of Shakti Vahini, an NGO, said that many district administrations prefer cases of child sexual abuse to be covered up because they are afraid of scandals being reported in the media. He thinks officials are afraid of their reputations being harmed and future promotions affected. “Ultimately, if these cases get highlighted they are just going to get a bashing,” he said.²¹⁶

Many child welfare committee members are in fact retired civil servants, while in Haryana state, from where some of the worst recent cases of abuse in children's residential care facilities have emerged, the committees are actually chaired by the senior district official, the deputy commissioner. According to Vinod Tikoo of the National Commission for the Protection of Child Rights, “there is a conflict of interest in that. What kind of justice will be made to the child when the deputy commissioner is also in charge of the CWC?”²¹⁷ It also means that the child welfare committees are headed by people who cannot give them much time. In Gurgaon, in Haryana, the deputy commissioner admits he is “so busy that it becomes difficult to take time out for the welfare committee.”²¹⁸

Many committee members are also unqualified for the job. The Childline survey found that fewer than a third of the committees were properly constituted. While 83 percent of members have had training on child rights, only 44 percent have received training on juvenile justice systems and child protection.²¹⁹ This means that many members simply do not understand the law, its rules, or evidence. Meena Jain, the chairperson of a child welfare committee in Bengaluru, was concerned that there is no “standard operating procedure.” “CWCs can be a very powerful mechanism for child protection,” she said, “but we need well-defined processes.”²²⁰

²¹⁵ Human Rights Watch interview with Bharti Sharma, New Delhi, May 1, 2012.

²¹⁶ Human Rights Watch interview with Rishi Kant, coordinator of Shakti Vahini, New Delhi, May 18, 2012.

²¹⁷ Human Rights Watch telephone interview with Vinod Tikoo, July 21, 2012.

²¹⁸ “Child Welfare Committee should have members of civil society,” *Times of India*, July 17, 2012, <http://timesofindia.indiatimes.com/city/gurgaon/Child-Welfare-Committee-should-have-members-of-civil-society/articleshow/15011527.cms> (accessed July 19, 2012).

²¹⁹ Childline India Foundation, “Everywhere Child Project.”

²²⁰ Human Rights interview with Meena Jain, chairperson of a child welfare committee, Bengaluru, May 25, 2012.

Juvenile Justice Act

The key law governing the protection of children in India is the Juvenile Justice (Care and Protection of Children) Act, of 2000, which was amended in 2006.²²¹ The central government drew up a set of “model rules” for implementing the act, which have since been adopted by individual states and in some cases altered.

The act addresses two categories of children: those in conflict with the law and those in need of care and protection. This is the law that created child welfare committees and special juvenile police units. It also established the rules for monitoring children’s residential care facilities and outlined minimum standards of care. The law also states that “every person, school or other such educational institutions” should abide by guidelines for the prevention of child sexual abuse.²²² However, it is not clear whether any such guidelines have in fact ever been issued.

Child protection experts have highlighted several ambiguities in the law and called for clarifying amendments. For example, while all institutional facilities are supposed to be registered, the act contains no penalties for those which refuse. Minister of State (Independent Charge) for Women and Child Development Krishna Tirath told Human Rights Watch that a new amendment to the law was being drawn up and that this issue was being looked at.²²³

International law

India is a party to the core international human rights treaties that protect children, including the International Covenant on Civil and Political Rights (ICCPR),²²⁴ the Convention on the Rights of the Child (CRC),²²⁵ and the Convention on Elimination of All Forms of Discrimination

²²¹ Juvenile Justice Act, 2000.

²²² Ibid.

²²³ Human Rights Watch interview with Krishna Tirath.

²²⁴ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976. India ratified the ICCPR in 1979.

²²⁵ Convention on the Rights of the Child (CRC), G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990. India ratified the CRC in 1992.

against Women (CEDAW).²²⁶ These treaties impose an obligation on states at all levels of government²²⁷ to take measures to protect children against sexual violence and abuse²²⁸ and to provide a remedy where fundamental protections have been violated.

The ICCPR not only holds a state responsible for protecting individuals from abusive state action but for responding appropriately and effectively to abuses committed by private actors. According to the Human Rights Committee, the international expert body that monitors compliance with the ICCPR, a state's failure to ensure rights could violate the covenant if it were "permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities." States in certain areas have "positive obligations ... to address the activities of private persons or entities. [For instance, they] have to take positive measures to ensure that private persons or entities do not inflict torture or cruel, inhuman or degrading treatment or punishment on others within their power."²²⁹

The CRC sets out the minimum protections to which children— defined as all persons under age 18— are entitled.²³⁰ The CRC requires that states "undertake to protect the child from all forms of sexual exploitation and sexual abuse."²³¹ This includes ensuring that perpetrators of sexual abuse and exploitation are brought to justice.²³² Moreover, the CRC requires states to take all appropriate measures to promote physical and psychological recovery and social integration of child victims of any form of sexual abuse. Such recovery and reintegration should take place in an environment that fosters the health, self-respect, and dignity of the child.²³³

²²⁶ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, ratified by India, July 9, 1993.

²²⁷ ICCPR, art. 50 ("The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions").

²²⁸ See, Human Rights Committee, General Comment 31 to the ICCPR, "Nature of the general legal obligation on states parties to the Covenant," U.N. Doc. CCPR/C/21/Rev. 1/Add.13 (2004), para. 9 (states parties shall "take appropriate measures ... or exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities").

²²⁹ CRC, art. 34.

²³⁰ CRC, art. 1.

²³¹ CRC, art. 34.

²³² Committee on the Rights of the Child, Concluding Observations: Benin, CRC/C/BEN/CO/2, para. 70(f).

²³³ CRC, art. 39 ("State Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment ... Such recovery and reintegration shall

Children’s complaints to the police or other individuals in positions of authority, and their evidence when cases come to court, must be taken seriously. Child victims and witnesses should be treated with dignity and compassion, given effective assistance including information and an opportunity to express their views; to have their safety and privacy fully protected and to be offered reparation.²³⁴

According to the Committee on the Rights of the Child— the independent international experts entrusted with interpreting the CRC and evaluating countries’ compliance with its obligations— the placing into institutions of orphans or children requiring alternative care from that provided by their parents should be a “measure of last resort and only occur when family-type measures are considered inadequate for a specific child, and that institutionalization is subject to regular review with a view to reassessing the possibility of reunification.”²³⁵ Indeed, the Committee on the Rights of the Child has urged countries to introduce well-resourced foster care systems as an alternative to institutionalized care.²³⁶

When institutionalization is necessary and in the best interests of the child, strict measures are needed to ensure that such institutions meet specific standards of care and comply with legal protection safeguards. States must ensure effective inspection mechanisms to check on children’s welfare in all institutions, whether they be government or private.²³⁷ Such supervision and oversight should be “systematic.”²³⁸ Moreover, children living in institutions face special difficulties in lodging complaints when they are victims of ill-treatment and sexual abuse, because they are often isolated

take place in an environment which fosters the health, self-respect, and dignity of the child.”). See also Committee on the Rights of the Child, General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child, CRC/GC/2003/4 (2003), para. 37.

²³⁴CRC, art. 12(2); and United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, adopted by UN Economic and Social Council resolution 2005/20.

²³⁵ Committee on the Rights of the Child, Concluding Observations: Latvia, CRC/C/LVA/CO/2, para. 33. See also CRC, art. 20; and Committee on the Rights of the Child, Report of the fortieth session, September 2005, CRC/C/153, para. 670.

²³⁶ Committee on the Rights of the Child, Concluding Observations: Nepal, CRC/C/15/Add.261, para. 50.

²³⁷ CRC, art. 3(3): “State Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in areas of safety, health, in the number and suitability of their staff, as well as competent supervision.” See also Committee on the Rights of the Child, Concluding Observations: Nepal, CRC/C/15/Add.261, para. 50; and Committee on the Rights of the Child, General Comment 3 on HIV/AIDS and the rights of the child, CRC/GC/2003/3, para. 35.

²³⁸ Committee on the Rights of the Child, Concluding Observations: Guyana, CRC/C/15/Add.224, para. 35.

from independent adults. Such children are entitled to access to effective child-friendly complaints procedures and to be made aware of them.²³⁹

Given the severity of the issue of child sexual abuse, the Committee on the Rights of the Child has taken an unusual step for an international human rights body and frequently called on governments to increase human and financial resources for programs dedicated to preventing and combating sexual exploitation, when they deem existing resources to be insufficient to the task.²⁴⁰

²³⁹ See Committee of the Rights of the Child, Report on the tenth session, October/November 1995, CRC/C/46, paras. 220 and 226; and Committee on the Rights of the Child, Concluding Observations: Saint Kitts and Nevis, CRC/C/15/Add. 104, para. 13.

²⁴⁰ See, Concluding Observations to Costa Rica, CRC/C/15/Add.266, para. 50; Concluding Observations to Benin, CRC/C/BEN/CO/2, para. 70; Concluding Observations to Uzbekistan CRC/C/UZB/CO/2, paras. 67 and 68.

VI. Recommendations

By enacting the Protection of Children from Sexual Offences Act, the government of India has taken a significant step in acknowledging and attempting to address the rampant sexual abuse of the country's children. However, to be effective, the government needs to ensure proper implementation of the act and other relevant laws and policies. Thus far the central and state governments have failed to enforce key safeguards. The shortcomings in the implementation of policies have left children vulnerable to abuse.

Steps the Central Government Should Take:

For Legal Reform and Policy Implementation

- Ensure that the National Commission for the Protection of Child Rights has sufficient resources to monitor the effectiveness of the Protection of Children from Sexual Offences Act. Appointed members should be experts in child protection and be backed up by effective investigative units. The commission should have an independent capacity for investigations.
- Review the effectiveness of the Protection of Children from Sexual Offences Act within a reasonable period, and seek amendments in consultation with women's rights, children's rights, and civil liberties activists to address shortcomings in the law, including the presumption of guilt against the accused.
- Use an evidence-based approach to legislative drafting including existing evidence of consensual sexual contact among adolescents under age 18. Consider recommendations from activists to lower the minimum age of consent for sexual contact to reflect the evolving capacity and maturity of adolescents, and respect their rights to freedom from all forms of gender-based violence, including sexual assault, “honor” killings, forced marriage, harmful traditional practices, and their rights to sex education, access to reproductive and sexual health without discrimination, and to help adolescents deal with their sexuality in a responsible way. Ensure that the law does not punish the same population—children—that it is designed to protect; under-18s who engage in consensual sexual contact with peers should not be criminally punished.

- Expand and improve training for pediatricians and gynecologists on recognizing and handling cases of child sexual abuse, including by developing a mandatory gender-sensitive training module for medical students on treating and examining victims of child sexual abuse, which should be developed in consultation with lawyers and experts on women's, children's, and health rights.
- Assist state governments in developing guidelines and training to properly implement the Protection of Children from Sexual Offences Act for the police, government and private social workers, child welfare committee members, doctors who work with children, judges, and other court personnel.
- Encourage all state governments and union territories to establish their own commissions for the protection of child rights and support these efforts.
- Amend the Juvenile Justice Act to require registration and the meeting of specified standards by children's residential care facilities before they open. Establish penalties for facilities that fail to register.
- Ensure that all institutions housing children are subject to regular and periodic inspections, and institute regulation of residential care facilities.
- Maintain and update data on existing child protection structures and mechanisms. Conduct a detailed nation-wide survey to understand the extent of child sexual abuse, and develop an awareness campaign backed by effective services including trained and licensed counselors.
- Prioritize implementation of the Integrated Child Protection Scheme and ensure that states properly and promptly utilize the resources allocated to them to create effective child welfare committees. Facilitate training of all child welfare committee members on India's juvenile justice and child protection systems. Prohibit government officials and those running children's residential care facilities from being appointed as members of child welfare committees to prevent conflicts of interest.
- Develop and disseminate guidelines for school administrators and teaching staff on protecting children from sexual abuse, recognizing abuse, appropriately speaking to victims, handling disclosure of abuse, and taking appropriate action when allegations arise.

- As part of the government's right to education policy, initiate and institutionalize a curriculum for children to prevent sexual abuse by helping children participate in their own protection through age-appropriate information, skills, and self-esteem.
- Create effective mechanisms for protection of at-risk children including street children and those engaged in child labor. Ratify and implement International Labour Organization Convention No. 138 concerning the Minimum Age for Admission to Employment. Special attention should be given to children in the informal sector. Create open shelters for street children and evolve a tracking system to follow up in cases where children are restored to their families, to discourage their return to the street.
- Formulate a comprehensive law on human trafficking especially covering all forms of child trafficking.
- Expand and promote Childline 1098, the helpline for children in distress, so that it operates in every district, and the telephone operators have the training to deal with cases of child sexual abuse.

For Reforms to the Criminal Justice System

- Implement police reform as recommended by the Supreme Court, including the establishment of a complaint mechanism to address police abuse and dereliction of duty. Provide training to ensure that the police investigate cases and do not re-traumatize victims and their families through a hostile or inadequate response.
- Adopt and implement a protocol for the medical treatment and examination of victims of child sexual abuse, in accordance with guidelines developed by the World Health Organization. Ensure that physicians and other medical staff respond to cases of sexual abuse in a sensitive manner that minimizes invasive examination and provides access to continued reproductive, sexual, and mental health services. Train doctors in all public health facilities to adopt and use this protocol.
- Develop, in consultation with women's, children's, and health rights experts in India, multidisciplinary centers in at least one government hospital in every district of the country or, when not practical, in a facility located according to an appropriate population-to-distance norm, staffed with trained personnel and equipped to provide integrated, comprehensive, gender-sensitive, and child-

friendly treatment, forensic examinations, counseling, and rehabilitation for children that suffer sexual abuse and act as expert witnesses.

- Implement the national scheme for compensation for victims of rape.
- Abolish the death penalty and in the interim institute a moratorium on capital punishment including in cases of abuse of children. Human Rights Watch opposes capital punishment in all countries and in all circumstances because the death penalty is unique in its cruelty and finality, and it is inevitably and universally plagued with arbitrariness, prejudice, and error.

While the Indian central government should develop suitable policies, it is the state governments that have the main responsibility for proper implementation.

Steps the State Governments Should Take:

For Legal and Policy Implementation

- Implement the Protection of Children from Sexual Offences Act and give priority to the training of the police, court personnel, government and private social workers, child welfare committee members, and doctors who work with children.
- Establish a commission for the protection of child rights if one does not exist in a state. All states should provide adequate resources so that such commissions can carry out their mandates and operate effectively and independently. Appoint qualified and independent experts to these commissions in a transparent manner. Ensure that police and other departments respond promptly to directives issued by the commissions.
- Appoint qualified and independent individuals to serve on child welfare committees. Adopt standard operating procedures and ensure that the committees have sufficient resources for members to carry out all their responsibilities, including mandated inspection of children's residential care facilities. Ensure that professional counseling services are available for children that have suffered sexual abuse.
- Ensure that committee offices are safe and suitable for interviewing children and that potential committee members do not have conflicts of interest. Train all child welfare committee members in conducting inspections and interviewing children before they take up their posts.

- Ensure that all institutions housing children are subject to regular and periodic inspections, and institute regulation of residential care facilities that includes independent and confidential interactions with children and staff.
- Conduct a survey of all residential care facilities and provide this information to child welfare committees, state child rights commissions, and the National Commission for the Protection of Child Rights. Establish a monitoring mechanism in which children are independently interviewed in a safe environment.
- Encourage child rights commissions to create a system for the proper vetting of all staff members in residential care facilities, including guards and cleaners. Program staff should receive appropriate training in child protection and positive disciplining.
- Create non-institutional care alternatives such as kinship care, community-based care, or open shelters. Support community-based protection mechanisms and alternative care.
- Draw up guidelines for schools and other educational institutions to prevent the sexual abuse of children, as directed by the Juvenile Justice (Care and Protection of Children) Rules, 2007.
- Implement guidelines to ensure that school administrators understand their responsibilities for preventing child sexual abuse and for taking appropriate action when it is found. Support teaching staff with trainings to protect children from sexual abuse, recognize abuse, properly speak to suspected abuse victims, and appropriately handle disclosure of abuse. Display the Childline 1098 number in every school. States should also support moves to expand this helpline for children in distress into every district, and instruct officials to cooperate with its activities.
- Require all institutions housing children to provide age-appropriate information to children, and inform them about their rights and complaint procedures. Each institution should have a board of counselors whom children can easily approach. Require all institutions to present information on each child to the child welfare committee, as the child is admitted and released.
- Create multidisciplinary centers in at least one government hospital in every district or, when not practical, in a facility located according to an appropriate population-to-distance norm, staffed with trained personnel and equipped to provide integrated, comprehensive, gender-sensitive, and child-friendly treatment, forensic examinations, counseling, and rehabilitation for children that suffer sexual abuse.

For Reforms to the Criminal Justice System

- Provide training to police to sensitively handle complaints of child sexual abuse so that they do not re-traumatize victims by aggressively questioning the child or family members. This should include training of junior ranks that have most public dealings at police stations or as first response units.
- Establish a policy that under no circumstances should the police attempt to dissuade or intimidate a complainant, with disciplinary consequences for those who do so.
- Expand and improve courses for police officers on protection of child rights including familiarization of officers with new laws and policies to ensure their proper enforcement. This should include training of junior ranks that have most public dealings at police stations or as first response units.
- Address problems of overwork and understaffing in the junior ranks that often leads to the reluctance to register complaints. Increase the number of investigating officer (sub-inspector) positions, as recommended by the 2000 Padmanabhaiah Committee on Police Reforms.
- Implement the Supreme Court's directive in the *Prakash Singh v. Union of India* case to separate investigation and law order functions of policing by assigning a significant proportion of trained officers exclusively to investigation duties.
- Provide training in and access to technology that can assist investigations, and take steps to attract instructors qualified to teach forensic science. Train investigating officers on modern, non-coercive techniques for suspect and witness interviewing and questioning. Provide sufficient resources to state and regional forensic labs, including mobile forensic labs, to permit them to return evidence evaluation reports to police within a reasonable period.
- Encourage the police to work closely with child welfare committees and local activists to identify cases of sexual abuse and take prompt action.
- Assist the central government in framing and implementing appropriate policies and guidelines for medical examination of victims of sexual violence, in accordance with guidelines developed by the World Health Organization. Ensure that physicians and other medical staff respond to cases of sexual abuse in a sensitive manner that minimizes invasive examination and provides access to

continued reproductive, sexual, and mental health services. Train doctors in all public health facilities to adopt and use this protocol.

- Provide prompt and professional counseling to all children who report being abused. Civil society groups that provide counseling should be supported and helped to expand. Village councils, or *panchayats*, should be encouraged to assist victims of child sexual abuse.
- Establish “child courts” to handle cases of child abuse as provided for under central government schemes. Arrangements should be made whereby children do not have to confront the accused, while at the same time ensuring that defendants can hear testimony and instruct their advocate in accordance with their fair trial rights. Steps should be taken to ensure that children are not overwhelmed by court surroundings.

International Actors, Including Donors and Aid Agencies, Should:

- Encourage the Indian government to respect its international commitments to implement laws protecting children.
- Provide technical support to India’s central and state governments to ensure the effective implementation of the Protection of Children from Sexual Offences Act, the Juvenile Justice Act, and the Integrated Child Protection Scheme.
- Support initiatives to increase awareness of child sexual abuse and help India develop guidelines to protect children from sexual abuse.
- Encourage the government of India to implement the United Nations guidelines on providing alternative care for children to ensure the protection and well-being of children deprived of parental care.
- Provide technical support to the Indian government to conduct a broader survey on child sexual abuse to update and improve on the findings of the 2007 report. The new survey should more accurately establish the scale of child sexual abuse in India. It also should examine in detail what happens to children after they report their abuse to adults, and how the criminal justice system and protection mechanisms such as the child rights commissions and the child welfare committees respond to victims.
- Provide support to civil society groups that are working to address child sexual abuse, and help them expand. There are very few organizations counseling survivors, and these are mainly based in the large cities.

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BREAKING THE SILENCE

Child Sexual Abuse in India

Child sexual abuse is a serious, widespread, and largely hidden problem in India. Children are often sexually abused by people known to them: relatives, neighbors, teachers and other school staff, and personnel in residential care facilities for orphans and other at-risk children. Fear of social stigma or lack of faith in institutions prevents many people from even reporting child sexual abuse.

By enacting the Protection of Children from Sexual Offenses Act in 2012, the government of India has taken a significant step in acknowledging and attempting to address the rampant sexual abuse of the country's children. However, to be effective, the government needs to ensure proper implementation of the act and other relevant laws and policies. Existing responses fall short of adequate child protection, prevention, investigation, and redress. In fact, children may be mistreated a second time by police and a criminal justice system that does not want to hear or believe their accounts, or by traumatic medical examinations.

Breaking the Silence uses detailed case studies to examine how current government responses are falling short, both when it comes to protecting children from sexual abuse and in the way that victims are treated once they are abused. Despite commitments to ensure the protection of its children, the government needs to take urgent steps so that existing child protection schemes, police, courts, local government administrations, children's residential care facilities, schools, and doctors help victims after sexual abuse has been identified and ensure that perpetrators are punished.



A 12-year-old girl who was allegedly raped by three men in Varanasi, India. Police did not believe her account and beat up her father.

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