

## **Children Affected by Political Violence in India**

Human Rights, Politics, and Protection

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When one thinks about children and armed violence, the first image that tends to come to mind is that of a child soldier or a refugee child who has been subjected to the horror of adult wars. This is an image that one does not associate with a vibrant democracy such as India – although growing international attention to the Naxalite insurgents' use of child soldiers is starting to tarnish this image. This chapter approaches the issue of children affected by armed violence from a different perspective; that of communal violence, to challenge the way that people think about children's human rights and protection of those rights during periods of targeted political violence on the basis of religious or other identity-based differences.

International Humanitarian Law (IHL) has long made special provisions for the protection of children in armed conflicts, and legal and normative developments have come a long way in regulating the protection of children in today's unconventional armed conflicts. Over the past two decades, concern over children affected by armed conflict has become a high profile issue on the United Nations Security Council agenda in particular. However, there are many children in India that are directly impacted by one-sided, targeted violence outside international and non-international armed conflicts as defined by IHL.

One of the contentions in this chapter is to argue that the vocabulary, and the legal and institutional framework for addressing children's protection issues arising from political violence continue to reside outside either the domain of armed conflict,<sup>1</sup> or social welfare-oriented responses by the Indian State. Accordingly, this chapter seeks to conceptualize the specific issue of children affected by political violence in India within this ambiguous terrain. Although communal violence may affect a small percentage of India's children, the nature of violence suffered by children is particularly worrisome, indeed genocidal, given the extremist

ideology behind the atrocities targeted towards them. Further, it is an issue that has serious implications for India's capacity as a democratic State to uphold the equality and human rights of its population, and to adhere to international humanitarian standards, given that there remains a high level of impunity for organizers and perpetrators of communal violence that is a recurrent feature of India's political landscape.

There is a twofold purpose for this emphasis on communal violence in this chapter, the first being that communal violence in India offers a very clear case study of the political nature of state security and protection practices in relation to minority groups, be they based on religious, caste, tribal, gendered, age or other specific identities that intersect at multiple levels. These offer insights into the inequality of minorities from accessing protection from state security forces during periods of political instability or heightened political interests, and the ideological nature of violence that is directly targeted towards children for specific political and symbolic purposes. Secondly, it points to the way that religion in India has been engaged as a political ideology for justifying gross violations of human rights against civilians, including both targeted and indiscriminate violations against children. While violence has been a prominent feature of the far-right Hindu nationalist (*Hindutva*) movement, political violence has also been features of other movements such as Sikh and Islamist extremism. This form of violence clearly runs counter to India's international legal responsibilities under international human rights, child rights and humanitarian standards to which it is committed, and to its own domestic law towards protecting children and upholding democratic values of equality and human rights.

This chapter proceeds in three sections. It starts by looking at the impact of communal violence on children, acknowledging the specific role that ideological beliefs play in producing the deeply-gendered nature of communal violence, through which women, children and foetuses are tortured, raped and killed as the symbolic humiliation and destruction of their religious or racial groups to which they are associated. The second section looks at the dynamics of communal violence in more detail, to illustrate the deeply political, and at times institutionalized, nature of this violence in which the State becomes complicit in the atrocities committed against populations on the basis of their respective identities. The final section overviews the international and domestic legal framework applicable to the protection of this specific category of children, highlighting areas where there are current discrepancies in the Indian legislative and institutional framework. This chapter concludes by arguing that there is

currently a need to reconceptualize the issue of children affected by political violence in India as a civilian protection issue. Viewing this issue through a human security lens as opposed to seeing it as a social welfare issue that is accorded low priority and inaction by the state is necessary before legal standards and normative commitments of the government can be translated into the effective protection of children.

### **The Impact of Communal Violence Children in India**

Children are immersed in the politics of communal violence in India, their needs and experiences are intertwined with other aspects of their identity including gender, religion, ethnicity, and caste/tribal status. Children are not only subjected to brutal violence due to the ideological nature of communal violence, they also suffer the trauma of witnessing brutal acts committed against close relatives and members of their community, and are faced with the insecurity of displacement, and the destruction of their homes, schools, and places of worship. In addition to physical and psychological trauma, children are vulnerable to loss of education, and increased vulnerability to exploitation, trafficking and child labour.<sup>2</sup>

One example of the way that children have been directly targeted in communal violence was the 2008 anti-Christian violence at Kandhamal District in Orissa. During this time, Hindu extremists targeted children directly by attacking schools, orphanages and school buses as well as central community sites such as homes, churches, NGOs and their parent's businesses that are important sites of security and protection for children.<sup>3</sup> Systematic reports by civil society groups have documented the high prevalence of gendered violence during the Kandhamal violence during when women, including their daughters, were targeted through widespread sexual violence.

The direct targeting of children through sexual violence and killings is a common thread that runs through other episodes of communal violence in India, and one that was particularly pronounced in the 2002 Gujarat Violence particularly. Martha Nussbaum describes the targeted violence against women and children in the 2002 Gujarat Violence, during which over 2000 Muslims were killed:

... approximately half of the victims were women, many of whom were raped and tortured before being killed and burned. Children were killed with their parents; fetuses were ripped from the bellies of pregnant women to be tossed into the fire.<sup>4</sup>

Consistent with Nussbaum's claims are documented evidence by civil society groups of mass rapes, live burials and burnings, acid attacks, impaling, and other brutal forms of torture that was deeply gendered, and linked violence against women with violence on their children – both born and unborn.<sup>5</sup> Many of these brutal acts against children coincided with similar attacks on the mother, were often performed in front of the parents, and rapes of both women and children were persistently followed by killings and burning of the bodies.<sup>6</sup>

What is clear from these documented reports of women's and children's stories is that violence is not merely indiscriminate, or spontaneous, but rather part of a broader systematic campaign motivated by a genocidal ideology that seeks the subordination and destruction of a religious community through the brutalizing of its women and children, the site of reproduction and future generations.<sup>7</sup> Reports of widespread gangrape following the September 2013 Muzzafarnagar riots in Uttar Pradesh indicate that this genocidal mentality in the performance of communal violence has not faded among extremist elements in India.<sup>8</sup>

These accounts are not isolated, with many reports of children being directly victimized through communal violence throughout India's independent history. For example, Ian Talbot describes how the 1947 violence in Punjab included the hangings of many young children from trees, and gang-rapes of young girls that coincided with the widespread gangrape of women in the towns of Gujjar Khan and Campbellpur districts as part of a broader genocidal campaign.<sup>9</sup> Asghar Ali Engineer gives an account of 100 males, many of whom were boys, who were taken by the Provincial Armed Constabulary (PAC) to Moradnagar near the Ganga Canal and shot in a line up.<sup>10</sup>

The legacy of communal violence at Partition has carried through into contemporary manifestations of communal violence. In 1999, Hindu extremists killed the Australian missionary Graham Staines with his two sons aged 6 and 10 by setting alight their car in which they were sleeping in Orissa.<sup>11</sup> As highlighted earlier, this was part of a broader campaign of attacks on Christian schools and churches by extremists that demonstrated the blatant willingness to use lethal violence against children in interreligious conflicts. The direct targeting of children in the political violence and the failure to distinguish children from the rest of the population is in direct violation of international humanitarian standards to protect children during armed hostilities,<sup>12</sup> let alone India's own constitutional provisions, as will be discussed later. This raises questions as to why communal violence still tends to be conceptualized in India as a site for political wrangling as opposed to a humanitarian issue.

Beyond the immediate physical and psychological toll, communal violence results in displacement of targeted populations which has a severe impact on children in India. There are currently over 526,000 people registered at IDP settlements in India, which suggests that the total number of people internally displaced across the country is a much larger figure given that many people flee to other parts of the country to live in cities, or with relatives and friends rather than settling in camps.<sup>13</sup> While many are displaced by ongoing armed violence in regions affected by insurgency, and by natural disasters, the highest number of those displaced in 2013 was by communal violence.<sup>14</sup> Some 50,000 people were displaced in the 2013 Muzzafarnagar violence alone, many of whom were placed in ramshackle settlements with poor conditions and given narrow timeframes to return to their homes where the violence had taken place. This is one area of protection that merits much more attention by the Indian state.

Not only are there significant gaps in the international regime to protect IDPs,<sup>15</sup> India also lacks legal and institutional protection mechanisms for IDPs.<sup>16</sup> IDPs in India receive inconsistent humanitarian assistance, determined by the presence or absence of international and local aid groups. This creates vulnerabilities for children such as the disruption of their education and exposure to violence and exploitation.<sup>17</sup> There is therefore a need for the Indian Government to create specific laws and institutions to protect IDPs as a particularly vulnerable population.

Finally, in considering the impact of political violence on children it must be noted that children are not just victims of violence, but many have been complicit in performing the violence itself. Most notable is the organized participation of Hindu male youth in the militant Hindu-nationalist youth organization, *Bajrang Dal*. The *Bajrang Dal* was established in 1984 as part of a broader social mobilization campaign by the right-wing Hindu nationalist movement, and has socialized youth into extremist ideologies of the *Sangh Parivar*.<sup>18</sup> These youth have been at the forefront in carrying out the violent activities organised by the Sangh's paramilitary organization *Rashtriya Swayamsevak Sangh* (RSS), and so the link between childhood and political violence in India is both complex and intergenerational. Youth recruited into the *Bajrang Dal* are a source of pride within the *Sangh Parivar*, and participate in the social outreach, welfare and cultural programmes that gains widespread support and popularity among the population in addition to their 'agitation' duties to preserve the far-right Hindu organization's values. The *Bajrang Dal* serves as an entry point for young Hindu males to be promoted into other organizations within the Sangh, marking

childhood and youth as the link that perpetuates communal ideologies and ontologies of violence.

This section has considered with very broad strokes the nature and extent to which communal violence in India affects children. Beyond the legal deficiencies, it is the ideological intent that underlies the willingness to target individuals based on identity constructs (reproducer of the nation, future enemy, symbol of purity and so on), and the fact that it continues to manifest itself with high levels of impunity for the perpetrators that raises the question of the ontological status of communal violence in India. Public condemnation of the extremist elements and lax authorities that are responsible for serious episodes of communal violence subsides with time, yet there has been no radical restructuring of the institutional, regulatory or normative context for policing, peace-building and justice that would rupture the institutional and cyclical nature of such episodes throughout regions where communal violence has been a persistent feature of politics. This is not just a failure of governance, it is demonstrative of the political and ideological tolerance of communal violence as a natural, or inevitable feature of inter-communal relations in which the targeting or participation of children plays a particular symbolic role.

The next section considers the nature of communal violence that places it in the political domain of contestation. The protection duties of the state towards populations affected by communal violence differ from those affected by armed conflict, and increased protections for religious minorities groups have therefore been unfruitfully debated within parliament. The protection of children is not adequately addressed through social welfare-oriented child protection programmes either, and so locating communal violence within the political realm has important implications for conceptualizing the security of this population.

### **Communal Violence and the State**

Communal violence, or political violence along religious lines, poses a great threat to the human security of many ethnic and religious minorities in India. While hundreds of communal riots take place annually in India,<sup>19</sup> major episodes of violence have periodically broken out in India in which hundreds, in some cases thousands,<sup>20</sup> have been killed and tens of thousands displaced. These have serious consequences for the security of minority groups, particularly Muslims, living in their respective communities. The rise of Hindu nationalism under the political leadership of the BJP since the 1980s has spurred a particularly religious inspired form of extremism that catalysed events such as the 1992 destruction of the Babri

Masjid (Mosque) in Ayodhya and ensuing riots, the 2002 Gujarat pogrom, and the 2008 persecution of Christians in Orissa.

What is most disturbing about the nature of communal violence in India that has been documented is the complicity of official actors at the national, state, and local levels in the widespread violation of human rights through either inciting and facilitating violence, refusing to respond to acts of violence taking place in front of them, or by their unwillingness to jeopardize their political status with voters from the majority community and therefore failing to intervene effectively to curtail the violence.<sup>21</sup>

As has already been discussed, the violence that has been inflicted on minority religious groups is often very cruel; including the large scale use of gang-rape and sexual violence, torture, burning of homes full of innocent civilians hiding from terror, and mass killings alongside the looting and destruction of homes, businesses, important community buildings such as places of worship, and schools. The reaction by authorities to the wholesale slaughter of civilians is chilling. One sees for example that in 2002 both the-then Chief Minister Narendra Modi and Prime Minister Atal Bihari Vajpayee rationalized and excused the genocidal violence that killed 2000 Muslims in Gujarat through public statements. There was also evidence that Modi was complicit in inciting and facilitating the violence himself leading up to and during the pogrom<sup>22</sup> although the Supreme Court has subsequently cleared him of any responsibility for the events that took place.

This was followed by a very weak response by the local Congress party who

...chose a course of moderate Hinduization, trying to capture votes by moving to what they perceived as the center (a familiar tactic), rather than utterly rejecting the Hindu nationalist program and defending pluralism and equal rights.<sup>23</sup>

The shift at the next national election from BJP to Congress, and the outcry in national and international media and civil society in this period did indicate a departure of national level from state level politics however. This has been a feature of India's divided democracy that has served to mitigate the impact of Hindu nationalism and communal violence throughout the country.

History has demonstrated that the relationship between religious and caste minority groups as 'protected' and the State as 'protector' is negotiable and fluid in India, contingent on the ebb and flow of local and national politics rather than an ideological commitment by the State to equal the protection of human rights.<sup>24</sup> Paul R. Brass<sup>25</sup> has demonstrated through quantitative research in Uttar

Pradesh that the link between anti-Muslim violence, elections and local state party competitiveness, is deeply political rather than religiously motivated.

Neither the Indian state nor the province of U.P. are anti-Muslim institutions whose police are engaged in either systematic or sporadic slaughter of Muslims. Rather, the police act against Muslims or do not act against Muslims, when riots occur, depending primarily upon the inclinations of their administrative and political superiors, which in turn depend upon which political party or coalition is in power.<sup>26</sup>

Concurrent with this observation is Lance Brennan's analysis of the state and communal violence in Uttar Pradesh. In three case studies, Brennan<sup>27</sup> demonstrates a departure between authority at the national level, and at the state level in which local politicians and police exercise a high level of autonomy from central government in inciting and condoning violence. Further, chief ministers representing the Hindu right, such as Narendra Modi and Kalyan Singh, have enjoyed high levels of impunity for their roles in facilitating anti-Muslim violence in Gujarat in 2002 and in Uttar Pradesh in 1992 respectively, ongoing political popularity, and elected offices. These have added to the injustice and impunity of communal violence that have become features of the broader political system. Both the Congress Party and BJP have directly been associated with inciting and facilitating communal violence in the past, such as the anti-Sikh riots in Delhi in 1984 and in Gujarat in 2002 respectively, implicating both ends of the political spectrum in India with responsibility for bringing about the current state of impunity of authorities in communal violence.

Despite the tensions between state-level and national-level government over the role that the police should play in protecting Muslims in Hindu nationalist riots, the ruling Congress party in the early 1990s, and again during the 2008 Orissa violence failed to reprimand the local police, the RSS and local authorities given the political quagmire confronted when opposing the majority Hindu voting constituency. Weak governance at this particular juncture of State-police relations in India undermines the capacity of the central government to counter severe human rights abuses in the face of political self-survival in upcoming elections where a strong voting constituency among majority or large religious minority groups are required.

The capacity of the central State to intervene to protect the rights of minority groups from state-level violence has also become a major sticking point in debates



over the draft Anti-Communal Violence Bill that has failed to pass through parliament, as is discussed in the following section. A number of significant ethnographic studies of communal violence in India have also demonstrated that communal violence is not a spontaneous outburst of inter-communal hatred, but is often preplanned for years, tightly orchestrated and often with tacit backing from local political elites and high-level police.<sup>28</sup> The high level involvement of political and administrative elites serves as the primary driver of ongoing impunity and therefore cyclical communal violence in India as an expedient political device. As such, those who reap the political benefits of orchestrated communal violence have managed for decades to evade sufficient domestic and international reprimand that is needed to radically transform existing practices.

The centrality of the role of the State in either aiding or abetting communal violence draws a direct line between politics of protection in India with specific issue of children affected by political violence. This particular aspect of political violence in India is the most crucial point at which reform to protect minority groups needs to be targeted. The following section provides a discussion of some of the ambiguity within existing legislative frameworks and the contention surrounding efforts to enhance the protection of religious minority groups that feeds into oversight and exclusion of the protection needs of populations affected by communal violence.

## **Legal Framework to Protect Children**

### **International laws to protect children**

There is an extensive international legal framework on both the protection of civilians from armed conflict<sup>29</sup> and specifically the protection of children who are accorded special protection during armed conflict.<sup>30</sup> The international legal framework to protect children is based on core human rights and IHL standards. Given that States are the actors that ratify international law, and the ones that are bound to both signatory and customary international law, the heart of the protection regime for children affected by armed conflict is hinged on the relationship between the State and the individual.<sup>31</sup> Subsequently, this relationship brings about a core dilemma in global politics when states are unwilling or incapable of protecting segments of their own population, raising the question as to who could and should take on that role. This section will discuss the emphasis in the 1989 United Nations Convention on the Rights of the Child (UNCRC) on the State as the primary actor responsible for the protection of children.

Secondly it will briefly overview the domestic child protection legislative and institutional framework to suggest that while the Indian Government is committed to the UNCRC and the protection and welfare of children, the particular issue of children affected by armed conflict remains marginalized and is in need of crucial legislative and institutional reform.

The UNCRC and the two additional optional protocols to which the Indian Government is signatory contains a number of protection clauses<sup>32</sup> that include the basic protection of children by the State signatories of the Convention from physical harm and conflict. The two Optional Protocols to the UNCRC on the involvement of children in armed conflict, and the sale of children, child prostitution and child pornography provide additional protection to children from sexual violence and trafficking associated with conflict, and the involvement of children in armed hostilities such as child soldiers. Article 4 of the UNCRC clearly states:

Governments have a responsibility to take all available measures to make sure children's rights are respected, protected and fulfilled. When countries ratify the Convention, they agree to review their laws relating to children. This involves assessing their social services, legal, health and educational systems, as well as levels of funding for these services.

Articles 38 and 39 stipulate the responsibility of the State to ensure that children are protected and cared for during conflict, not engaged by armed forces during conflict, and appropriately rehabilitated following the experience of conflict. Article 22 clarifies the responsibilities of States to protect refugee children living within its border, although it is silent on the question of IDPs. Without formal recognition of their claim to asylum, IDPs are arguably much more insecure than refugees, and yet remain a category of people whose protection needs are often bypassed by the States in which they reside due to either the direct role of the State in their displacement or the unwillingness of political actors to formally respond to their needs.

The Guiding Principles on Internal Displacement were created in February 1998 to respond to the inadequacies in international law for the protection and assistance of IDPs,<sup>33</sup> yet these guidelines remain only standards or recommendations rather than binding international law. While there is greater recognition within the United Nations and among States regarding their responsibility to respond to the protection needs of IDPs living within their own borders – or the requirement

to request external assistance when unable to do so<sup>34</sup> – the protection of IDPs remains a lacuna in global politics that still poses a challenge to the international humanitarian community.<sup>35</sup> Likewise, the ‘protection gap’ pertaining to IDPs in India results from the absence of a dedicated government agency to document, protect, resettle and rehabilitate internally displaced populations.<sup>36</sup>

International protection for children affected by communal violence is therefore wanting given that it falls directly within the purview of the state alone that is often either complicit, or lax in responding to the needs of the population as was evident in the recent major episodes of Gujarat 2002, Orissa 2008 and Muzzafarnagar 2013. Given that IHL protections formally take hold in the event of an international or non-international armed conflict only, its application during the short-lived yet serious periodic episodes of communal violence is still ambiguous. India requires a much more vigorous legislative regime as well as institutional reform for protecting populations from communal violence that, as the following discussion elaborates, remains elusive. This accords many children the precarious status of living outside both international and formal state protection when they are directly targeted and displaced by pre-planned and heavily-orchestrated periods of communal violence.

### **The Indian policy context**

Theoretically, the provisions that exist in India’s constitutional and policing laws (in addition to provisions made through international law to which India is signatory) should be sufficient to protect minority populations from communal violence. India’s Constitution states that equality is a fundamental freedom, prohibiting discrimination on the grounds of religion, race, caste, sex or place of birth in Article 15. Article 21 further states that the protection of life and personal liberty constitutes a fundamental right, with the fundamental right to freedom of religion covered in articles 25 to 28.

In addition to the fundamental protections offered under the Indian Constitution, central and state authorities are mandated to protect the civilian population through its policing and justice system. The Code of Criminal Procedure, the Indian Police Act and the Indian Penal Code theoretically offer adequate mechanisms for engaging state and central government authorities in response to rioting and violent acts on the basis of religious, racial, caste/tribal or other forms of prejudiced attack. The Indian Penal Code Act 1860 Act specifically proscribes the promotion of ‘enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts

prejudicial to the maintenance of harmony' (Chapter 8, Section 153A) among other specific clauses corresponding to collective violence against groups on the basis of identity.

India is also signatory to key international humanitarian and human rights laws that protect civilians in the event of political violence and armed conflict, including the Geneva conventions (although not the additional protocols, importantly Additional Protocol II relating to the Protection of Victims of Non-International Armed Conflicts), the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention against Torture, the Convention on the Rights of the Child, including the optional protocol on the involvement of children in armed conflict.

Despite the existence of this comprehensive body of legislation that should protect the rights of populations from communal violence, systematic evidence points to the failure of the rule of law during many cases of such violence where authorities have failed to discharge their duties in an impartial and effective manner<sup>37</sup> as was discussed in the previous section.

Importantly, there is a lack of adequate social protection mechanisms in place to systematically provide relief, rehabilitation and reparation to affected populations in the wake of rioting and targeted attacks across the states of India. The absence of legislation to explicitly account for the needs of communities whose lives, livelihoods and homes have been targeted in political acts of violence is reciprocated with an absence of dedicated structures to accommodate their needs for relief, rehabilitation and reintegration into communities and judicial redress.

The repeated occurrence of communal violence over the decades has sparked a debate in India as to whether specific legislation to protect minority religious groups, scheduled caste and scheduled tribes is necessary to guarantee their rights to protection and justice. Civil society and human rights advocates drafted a bill to parliament that was adapted as the *Prevention of Communal and Targeted Violence (Access to Justice and Reparation) Bill 2011*. The Bill was introduced to the Lok Sabha (lower house of parliament) in 2011 and a revised version to the Rajya Sabha (upper house) in 2014 where it was defeated. This proposed bill was subject to heated debate in India for a number of reasons that will be briefly discussed in this section given the importance of this bill for explicitly acknowledging and substantiating the needs of the civilian protection crisis that exists during and following periods of communal violence.

The argument made by secular human rights and civil society activists for the bill rests on the acknowledgement of inadequacies of existing legislature to bridge the actions of central and state-level police and judicial authority to prevent or mitigate the outbreak of religious violence and to bring unbiased legal redress for victims.<sup>38</sup> However, the civil society members, who drafted the original outline of the bill submitted to parliament, have rejected the revised version of the bill drafted by members of the National Advisory Council. They argue that it advances a draconian vision of the central government, offering it exceptional powers to intervene in state-level jurisdiction during outbreaks of communal violence that may potentially be repressive and run counter to the original intentions of the bill. There is further criticism of the bill in relation to proposed processes for police investigation and judicial redress, and the failure to articulate the specific needs of minority groups when offering the right of reparation to victims.<sup>39</sup>

The political factions opposing the bill argue that the existing legislation, including the Constitution, Indian Penal Code, the Code of Criminal Procedure, and the Indian Police Act provide adequate legal mechanisms to prevent and respond to communal violence without needing specific legislation. They suggest that more emphasis should be given the implementation of current law.<sup>40</sup> Of concern to the primarily Hindu nationalist constituent opposing the bill is the language of minority groups used in the bill, arguing that it marginalizes Hindus. By outlining the protection for minority religious groups, Hindu political activists fear that Hindus residing as minority populations would not be protected by the law in the event of religious tensions occurring in a site where a 'minority' religious group constituted a majority of the local population<sup>41</sup>.

These debates have surfaced the fear and mistrust between religious groups – primarily Hindu and Muslim, but also other religious minorities – and between civil society and the state that have stalled the progress of this legislation that could potentially serve to bridge a lacuna in the protection of populations from communal violence, if carefully altered. The draft bill was significant in that it identified the multifaceted nature of communal violence, including recognition of crimes such as sexual assault, torture and other forms of organized and targeted violence. The bill explicitly linked existing legislation and constitutional duties of the state in relation to communal violence rather than leaving it open for interpretation. It also addressed the crucial area of impunity of government officials, detailing the definition of the dereliction of duty and abetment of violence by authorities in situations of communal violence.

The need for precise legislation to protect populations from communal violence is commensurate with a broader need for dedicated institutions and structures that provide systematic protection for victims. The particular gaps in protective structures for children affected by communal violence in India are discussed in the next section.

### India's child protection framework

As discussed above, the development of international law and dedicated institutions<sup>42</sup> for the enhanced protection of children affected by armed conflict has yet to be fully translated into effective protection of children within individual states. There appears to be a tension, or at least an ambiguity within the Indian Government's response to the issue of children affected by conflict in its own policymaking. Notably, it is clear that children affected by armed conflict have yet to be conceptualized by the state as a particularly vulnerable category of civilians requiring protection under international humanitarian legal standards.<sup>43</sup> The absence of adequate protection institutions to deal with India's populations affected by armed conflict more generally maps onto the inadequate capacity of the state to provide emergency assistance to children harmed and displaced through episodes of short-term armed violence

The Ministry of Women and Child Development that is mandated to oversee child protection across the government ministries states that it is responsible for 'children in crisis situation such as *street children*, children who have been abused, abandoned children, orphaned children, children in conflict with the law, and *children affected by conflict or disasters*, etc.'<sup>44</sup> Although it emphasises 'children affected by conflict', India has no dedicated laws, mechanisms or political will for the protection of such children,<sup>45</sup> and has bypassed the issue altogether in both the previous and current child protection frameworks designed with UNICEF that guides the current government policy on child protection.<sup>46</sup>

Indeed the Indian Government denies the presence of internal or international conflict in India which circumvents the creation of a more robust capacity to protect conflict affected populations.<sup>47</sup> In particular Section 2.10 of the Joint Indian Government and UNICEF 2007–12 Country Programme report titled *Children in Disaster Situations (both natural and man-made)*, the authors acknowledge in a short paragraph and in very general terms the negative impact of conflict and communal violence on children.<sup>48</sup> References to communal violence are removed completely in the subsequent 2013–17 Country Report that refers only to concern regarding how children's rights are affected by 'ethnic violence and left wing

extremism in some areas of states'. The 2007–12 report then focuses the rest of the section on natural disasters, calling for the Indian Government to create better disaster management systems to mitigate the impact of earthquakes, floods and tsunamis.<sup>49</sup> There is no further discussion on children affected by conflict such as child soldiers, and children affected by communal violence. Displaced children are treated in the framework as a category in isolation to conflict, even though the Indian Government acknowledges briefly a range of conflict and non-conflict factors for inducing displacement among children. It then focuses its policy priorities on institutions such as children's homes and orphanages as the site for protection and reform for this category of children rather than the source of the conflict induced displacement itself. The 2013–17 report removes its reference to displacement altogether.

Institutionally it is also the case that there are no dedicated structures created specifically to respond to the issue of children affected by armed conflict. Responsibility for child protection is delegated among government ministries as follows – children affected by armed conflict are notably absent:

... the Labour Ministry is responsible for child labour elimination programmes, Ministry of Women and Child Development takes care of juvenile justice, child trafficking and adoption related matters, Ministry of Health and Family Welfare looks into the implementation of PC&PNDT Act to check female foeticide.<sup>50</sup>

Further, in its report *Programmes for Care and Protection of Children*, the Ministry of Women and Child Development recognizes substantial deficiencies of the national child protection framework. Problems with the current system overall include poor planning and coordination – such as failing to work with other governmental sectors on prevention and protection of children 'outside the safety net'. Further, current programmes have very limited reach and lack comprehensive mapping or coverage for delivering protective services. The inadequacies are compounded by poor infrastructure and inadequate resourcing – with child protection allocated only 0.034 percent of the total Union Budget. The report points to 'serious service gaps' and low priority of child protection in states, and a 'poor understanding of child rights and lack of child friendly approach affect both planning and service delivery.'<sup>51</sup>

The police force is at the forefront of social protection given its proximity to the population in periods of rioting and violence. However, the police have also been demonstrated to be primary actors in allowing, condoning and even

facilitating communal violence in India, subject to partial and politicized decision-making and deep corruption.<sup>52</sup> The police force should thus be considered as a frontline institution for reform, contextualized within the broader picture of child protection from both conflict and political violence. The mainstreaming of education in child rights, human rights and international humanitarian law is one such area that is needed across the police force.

There are several key conclusions to be drawn about the status of the protection of children from armed conflict and political violence in India as the law and institutions currently stand. Firstly, there is an apparent hesitation on the part of the national government to classify children affected by armed conflict as a forefront child protection concern given the sporadic acknowledgement of the issue in official documentation rather than a consistent official approach. As such there is an inadequate legal and institutional framework to address child protection in this very concerning area of conflict and communal violence. Secondly, a question then arises as to whether the social welfare and social protection sectors (Ministry of Women and Child Development, Ministry of Labour, Ministry of Health and Family Welfare) in which child protection at large has been placed is the most appropriate way of addressing the protection needs of these children.

In accordance with IHL that accords special protection to children over and above the protection standards for civilians in conflict, this chapter argues that it is more appropriate to conceptualize children affected by armed violence as a civilian protection issue, linked to the context of the broader humanitarian impacts of conflict in various regions throughout India. This implicates the Indian Government, alongside the international humanitarian community – state and non-state - to recognize and respond to the civilian protection needs of marginalized people groups in conflicts and periods of political violence. Protecting children therefore needs to be an integral part of conflict resolution and peace-building efforts in areas affected by political violence in India.

### **Conclusion: Politics and Human Rights of Children Affected by Armed Conflict**

This chapter has analysed the interconnected relationship between political interest and the capacity of the state to protect minority populations from human rights abuses associated with political violence. It is within this broader structural framework of politics, inter-communal social relations and political violence that the human rights of children affected by conflict can be conceptualized and



addressed. The targeting of children through attacks on schools, orphanages as well as central community places of worship and the home are part of a broader political campaign of violence in which extremist ideologies are played out in the interests of political elites with the power to either quell or ignite armed violence. Further, the forced displacement, rape, torture and killing of children as integral to the broader campaign of political violence is in direct violation with both international human rights, humanitarian, and child rights law, and with India's domestic legal standards to protect the human rights of children.

There are therefore two key structural/institutional sites highlighted in this chapter in seeking to elucidate the human rights situation of children in conflict affected communities in India. Firstly, the absence of adequate legal frameworks and government agencies for protecting civilians displaced or otherwise affected by conflict is a major structural lacuna that hinders the protection of children. Secondly, although there are many currently indispensable local and international civil society organizations working to assist conflict-affected communities, the absence of corresponding and partnering government agencies represents an abdication on the part of the government to formally recognize these human rights imperatives. Protection in India is a highly political and therefore contestable process. Negotiating between political priorities of local and national authorities and the obligation to protect minorities on the basis of human rights as opposed to political interests is one challenge that needs to be confronted if the Indian Government is to demonstrate its commitment to the equality and human rights of all people living in the country.

## Endnotes

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  - 16 IDMC, 'India: National and State Authorities Failing to Protect'.
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  - 18 The Sangh Parivar is the family of Hindu-Nationalist organizations that includes their political wing – the Bharatiya Janata Party (BJP), and their militant wing – the RSS.
  - 19 The *Times of India* reported the following figures on 27 November 2014: 561 incidents of communal violence between January to October 2014, 694 for January to October in 2013, and 668 for January to October in 2012. Available at <http://timesofindia.indiatimes.com/india/Riot-rate-dipped-in-2014-Rijiju-tells-Parliament/articleshow/45291081.cms>, accessed on 3 December 2014.
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