

Poor State of Kashmir's Children

What is the issue?

The unrest in Kashmir (following the [scrapping of Art 370](#) on August 5 2019) has kept the Kashmir's children traumatised by conflict and in perpetual fear.

What is the state of Kashmiri children?

- **Health** - Every third child in Shopian district, J&K, has a clinically diagnosable mental disorder.
- Around 1.8 million adults in Kashmir Valley (45% of its population) showed symptoms of mental illness in 2015.
- Thus, even before the recent unrest, the disastrous results of a history of violence, illegal detentions and torture in the Valley were visible.
- **Detention** - Children, many of whose ages were wrongly recorded, were being detained and mistreated for several days in police lock-up, without any charge.
- Many of them were taken away at midnight by law enforcement officers with no record of their arrests, making it difficult to trace them.
- Various reports of illegal detention and torture of boys and a firsthand account of mothers waiting for their children's return have been released.
- **Education** - Between 1990 and 2005, a total of 46 schools were occupied by the armed forces and more than 400 schools were devastated.
- Such destruction of educational infrastructure, in addition to the unlawful detentions, leaves a lifelong impact on children.
- **Psychology** - Children in Kashmir grow up caged and under the shadow of a gun.
- As the parents of many of them go missing, they are also forced to assume the responsibility of caregivers for their siblings.
- There is a strain on social structures due to the loss of family environment, safe spaces and education and health facilities.
- All these severely traumatise the children and perpetuate a cycle of fear and bitterness in them.

What perpetuates this condition?

- The government is in the process of punishing those protesting against its authority, and the Kashmir's children have become the victims of this

political game.

- Children are mostly detained under the Public Safety Act (PSA), which allows preventive detention for up to 2 years without any trial.
- In many of these cases, the police/magistrates had no procedure to verify the age of the detainees.
- In most cases, minors were kept in custody along with adult criminals and released only after the judicial intervention.
- About 80% of these detentions were held illegal by courts.
- It is found that the Armed Forces Special Powers Act remained a key obstacle to accountability.

What are the legal concerns?

- Such treatment of children is undoubtedly in violation of multiple laws and conventions.
- **SC Judgement** - The disappearances of children are in clear breach of the Supreme Court's directions in the D.K. Basu case.
- The court had said that the next of kin have to be informed of every such arrest and the reasons thereof.
- Earlier, in 1982, the Supreme Court had in the Jaya Mala case, condemned the preventive detention of a student.
- It had also observed that young people, even if their acts are misguided, could not be punished harshly.
- **ICCPR** - The above acts are in violation of Article 14(4) of the International Convention on Civil & Political Rights (ICCPR).
- It states that all proceedings against juveniles should take into account their age and the desirability of promoting their rehabilitation.
- **UN Convention** - The UN Convention on the Rights of the Child had been ratified by India.
- It provides that the arrest/detention of a child shall be in conformity with the law and used only as a last resort and for the shortest appropriate period.
- **NCPCR** - The detention is in violation of guidelines of the National Commission for Protection of Child Rights (NCPCR).
- It clearly states that a blanket characterisation of adolescent boys as security threats during civil unrest should be avoided.
- Also, authorities should investigate and take action against personnel involved in arbitrary detentions, mistreatment or torture of children.
- **JJA** - In 2003, the Madras High Court in Prabhakaran v. State of Tamil Nadu held that the Juvenile Justice Act is a comprehensive law.
- It thereby held that the Act overrides preventive detention laws enacted for national security.
- Worryingly, none of these laws and directives seems to be followed in

Kashmir.

How is the scope for legal recourse?

- Courts seem to be the only forums offering some promise of redressal when disappearances of children occur.
- However, state actions since August 5 have taken away even this limited option from Kashmiris.
- Presidents of the J&K High Court and District Bar Associations and senior lawyers were arrested under PSA.
- With this, most of Kashmir's 1,050 lawyers have been on strike.
- Over 200 habeas corpus petitions have been filed till now.
- However, since most post offices are closed, lawyers are unable to serve notices on the respondents.
- In such contingencies, the Constitution provides for the protection of the citizens' fundamental rights by empowering them to approach the Supreme Court directly in case the rights were violated.
- The right to constitutional remedies is by itself a fundamental right.
- Conscious of its obligations to protect the right to life of Kashmiris, the Supreme Court has taken upon itself the task of inquiring into the allegations of state violence against children.

What is the way forward?

- No curbs on democratic rights on the promise of development can justify the inhumane treatment of children.
- There is a dire need now to speak out for the children of Kashmir.

Source: The Hindu