
PARTICIPATION OF “WALLED” CHILDREN BEGINS WHEN ADULTS LISTEN—THE RIGHT TO PARTICIPATION OF CHILDREN IN CONFLICT WITH THE LAW IN INDIA

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Abstract

This paper presents the art series “*Walled*”, in which I depict my reflections on the experiences of children in conflict with the law in state-run facilities—how and why they might feel *walled*. The walls in the six paintings symbolize barriers to children’s participation. They are dark and seemingly insurmountable, yet make way for windows and light that represent children’s agency. In doing so, I draw on my experience of working with children in conflict with the law as a practitioner in India, my artistic construction of them feeling “walled” and my qualitative research on their right to participation.

To situate my work experience and reflections in theory and academic literature, I conducted research to identify challenges to participation rights that these children face. The key finding from my research is that children are viewed by adult practitioners as *future becomings*, hence, incapable and incompetent to participate. However, when adult practitioners *listen* to children, their knowledge and practice is informed by children’s views and perspectives. Listened-to children feel empowered and more able to participate. Thus, the onus is on adult practitioners to create safe spaces for children to share and contribute to decision making.

Keywords: children in conflict with the law; right to participation; Article 12 UNCRC; juvenile justice; India.

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[A] INTRODUCTION

Globally, there is increasing recognition of children's right to participation, in theory and in policy. However, evidence suggests that participation continues to elude children, especially those in care (Holland & Ors 2010; Gallagher & Gallacher 2012). Within the larger category of "children in care" or "looked after childhoods" (Goodyer 2013: 394), children in conflict with the law remain largely invisible and their participation rights under-researched (Abebe 2009), particularly in the Global South.

As a practitioner in child protection in India, I witnessed children in conflict with the law reduced to *numbers* and *files*, with no *real* say in decisions that impacted their lives. I discerned that children felt "walled", unable to make sense of the legal processes, to express what they thought or felt, or to have any influence over what was happening to them. I used art to express what I observed and thought, and how I felt. In this paper I present the art series "*Walled*", comprising six watercolour paintings that represent *my construction* of the experiences, feelings and emotions of children in conflict with law. In the series I represent children as individual human beings with unique life experiences, and not as numbers listed in files.

The first four paintings (*Walled I-IV*) in the series depict how children might find themselves in state-managed residential facilities—lonely, afraid, uncertain, *walled*. The blue/grey colours are used to signify the darkness in the children's circumstances of being deprived of liberty. The walls in the paintings symbolize not just physical barriers, but also the legal and systemic barriers that children face in sharing their knowledge, creativity and ideas. The walls also symbolize cognitive barriers that might stand in the way of children's positive self-image and dreams of better futures.

Being and feeling *walled* may manifest in interactions of children with adult practitioners in different ways—for example, children going silent or overtly vocal. I represent some of these manifestations in the paintings, as signposted in the respective captions. However, despite being walled, children do have agency, and I depict this with a window of light (even if tiny), or open blue sky. I portray children as *beings* in the present, competent to participate and contribute meaningfully to decisions (as in *Walled-V*). And when children are listened to, the walls start giving way to light, melting away the darkness (as in *Walled-VI*).

To situate my experience as a practitioner in theory and empirical evidence, during my postgraduate degree at University College London,

I conducted qualitative research on the right to participation of children in conflict with the law in India. The aim of my research was to identify challenges to realization of the right to participation of children in conflict with the law. My research question was: how do adult practitioners in juvenile justice construct the right to participation of children in conflict with the law? I conducted six semi-structured interviews, using a combination of experience/behaviour questions and opinion/value questions (King & Ors 2019). Each of the six participants represented a different statutory role in the juvenile justice system and diversity in ages, years of experience, gender and education. I used thematic analysis to evaluate the research data.

I found that the adult practitioners whom I interviewed construct children in conflict with law as future *becomings*—incapable of and incompetent to participate in making decisions about their lives. They assumed the position of knowers, disregarding and, on occasions, falsifying children’s testimonies. Most interestingly, adult practitioners constructed children’s participation as the children’s duty rather than as their right.

It is pertinent to report that during data analysis, *listening* emerged as a cross-cutting theme across different interviews. Synthesizing those findings, this

paper argues that, when adult practitioners listen to children in conflict with the law, it enables the children to participate in statutory processes. Listening also empowers the practitioners in many ways, including strengthening their professional practice. These research findings resonated with my practitioner experience and reflections on children being and feeling “walled”. The art series is therefore woven throughout the project and complements the research findings.

In the following sections, I first lay down the background of this research—including the theoretical framework and the legal context relevant to India. I then consider my reflections on the art series *Walled*. Finally, I discuss key research findings and analysis, drawing on the larger body of literature and quotations from the research participants, weaving into the findings the six paintings comprising *Walled*.

[B] BACKGROUND

Children as human “beings” or “becomings”

Childhood has been theorized as a social construction (James 2007; Rosen 2020), where a distinction is often drawn between adult “human beings” and child “human becomings” (Lee 2001: 7). As adults, we envisage children’s lives and activities as a preparation for

adulthood, viewing them as full and complete human beings in the future and human becomings in the here and now (Lee 2001: 8).

Construction of children as human becomings pre-supposes innocence, vulnerability and incompetence (Hanson 2012). When viewed as becomings, children are assumed to lack the “stability and completeness” of adults and hence are incompetent to “participate independently in serious activities like work and politics” (Lee 2001: 8).

The tension arising out of the construction of children as human becomings versus beings impacts how adults construct children’s rights and the practical realization of their rights (Hanson 2012). This theorization is useful for this paper in unpacking the construction of children who experience conflict with the law and the limiting of their participation rights by adult practitioners.

Children’s right to participation

The right to participation of children, enshrined in Article 12 of United Nations Convention on the Rights of the Child 1989 (UNCRC), has been called the “linchpin” of the Convention as it “recognises the child as a full human being with integrity and personality and the ability to participate freely

in society” (Freeman 1996: 37). According to Laura Lundy, Article 12 has a “transformative potential” in enabling children to exercise the entire spectrum of their protection and provision rights (Lundy 2007: 928). For her, the strongest argument in favour of the right to participation of children is its potential to “harness the wisdom, authenticity and currency of children’s lived experience in order to effect change” (Lundy 2007: 940). However, the onus is on adult practitioners to create a favourable environment for this to happen (Freeman 1996: 38; Kitzinger 2015).

Adult counterparts in children’s justice systems are professionals who have statutory power to make potentially life-changing decisions for children in conflict with the law (Dalrymple 2003; Kallio & Häkli 2011; Liebel & Saadi 2012: 168). Adult practitioners with their legal knowledge and expertise may not consider legal decision-making to be a domain legitimate for children to participate in (Dalrymple 2003). Often adults may lack confidence in children’s abilities to understand the legal procedures or take wise decisions for themselves. Practitioners may also be concerned about potential harm that may be caused to children when participating in official meetings. Moreover, children’s participation may result in putting excessive

pressure of decision-making on children and then holding them accountable for those decisions (van Bijleveld & Ors 2015).

Ample evidence exists to support the ideas that “children are more capable than adults give them credit for” and also that children’s “capacity for decision making increases in direct proportion to the opportunities offered to them” (Alanen & Mayall 2001: 13; Lundy 2007: 937). Studies have shown that children in conflict with the law are “authorities” on their own lives (Dalrymple 2003). Yet, “the child continues to be represented as the object of children’s rights discourse, rather than as an agent in the process of interpreting rights” (Daiute 2008: 711). To leverage children’s knowledge and expertise, it is incumbent on the adult practitioners to create real and effective opportunities for the participation of children in decision-making (Lundy 2007; Kitzinger 2015).

Children in conflict with the law

It is estimated that there are nearly 3 million children worldwide in state detention (Walmsley 2005; UNICEF 2021). Yet, the figure may only be the tip of the iceberg, due to various practices of unlawful and unaccounted detentions prevalent across numerous countries (Martin & Parry-Williams 2005;

UNICEF 2006; Hamilton & Ors 2011; UNICEF 2021). Over 90 per cent of these children are accused of petty offences, which may be merely children’s survival and coping strategies (Martin & Parry-Williams 2005: 17). An over-whelming majority of children in conflict with the law come from “particularly deprived communities and families, often from discriminated minorities” (Martin & Parry-Williams 2005: 3; UNICEF 2006). In the absence of access to justice and legal representation, 90 per cent of them continue to languish in detention pending trial, “for no fault of theirs” (Advocasey 2003: 10).

While a large body of international law on juvenile justice seeks to promote alternatives (McDiarmid 2007) to the formal justice system, national legislations and legal practices continue to rely on criminalization and detention (Advocasey 2003; Amnesty International 2003; UNICEF 2021). Criminal incarceration exposes children to “a system that is often violent and frequently arbitrary” (Martin & Parry-Williams 2005: 4).

Convictions and legal penalties may be followed by social stigma, trauma, the loss of education, health and employment opportunities and, often, subjection to “various forms of violence like mental, physical and sexual” (Martin & Parry-Williams 2005: 4).

Children in conflict with the law in India

India is home to more than 400 million children (UNICEF 2022), many of them vulnerable to intersectional disadvantages imposed by gender, caste, class, *etc* (Kannabiran & Kannabiran 2005; UNICEF 2006; Gorringer & Rafanell 2007; UNICEF 2021; UNICEF 2022). While it may be difficult to estimate the number of children in conflict with the law in India, official figures of 35,000-40,000 children apprehended by police across the country are available in the public domain (National Crime Records Bureau 2022). However, amidst reports of alleged practices of illegal detentions of children in police lockups and prisons (eg Sharma 2023), in 2024, the National Legal Services Authority in India launched a national campaign to “find and assist children illegally held in prisons” (Verma & Sharma 2024: 1).

When in detention, children face further violence and subhuman living conditions that often have irreversible impact on their physical and mental health and future opportunities (Teltumbde 2017; Kumari 2020). They also face severely negative media publicity as individuals and as a cohort (Alamu 2017; Teltumbde 2017). Consistent with trends internationally (Martin & Parry-Williams 2005; UNICEF 2006), children in

conflict with the law in India are more likely to come from poor and marginalized communities and religious minorities (Teltumbde 2017; Parackal & Panicker 2019; Sharma 2023; Verma & Sharma 2024).

India has created a separate justice system for children by enacting the Juvenile Justice (Care and Protection of Children) Act 2000 (UNICEF 2006). However, following the 2013 rape and murder case of a young woman in the capital city of New Delhi (Business Standard 2020), the legal protections accorded to children in conflict with the law came under severe pushback (Raha 2019), in view of the fact that one of the six accused persons was still a child (under 18 years old). The law was subsequently re-enacted as the Juvenile Justice (Care and Protection of Children) Act 2015 (JJ Act) paving the way for the potential diversion of children (16-18 years) to the adult criminal justice system. The move has been considered violative of the rights of children in conflict with the law and the UNCRC (Raha 2019; Kumari 2020).

[C] REFLECTIONS ON WALLED

I started my professional journey as a practitioner in the juvenile justice system in India in 2008. It was an inspection visit to a children’s shelter home that changed the course of my professional practice

and continues to shape my research interests. I found that the “bachcha barrack”,² located within the premises of a huge jail, housed more than a hundred children (all boys) in conflict with the law. For the inspection, children were made to stand in two long files, facing each other. Each child held a card in their hands which bore their name, case number, sections of the Indian Penal Code 1860, and the status of their case in the court. They were all undertrials waiting for the next hearing of their cases.

Nearly 15 years later, the image of a hundred young people lined up in front of me remains imprinted in my mind. This scene inspired the first painting in the series *Walled (Walled-I)*. What stood out for me that day was that the juvenile justice system, which I was a part of, had reduced *real* children to files and statistics. That day I also observed that children would talk to each other, whisper, exchange glances and smiles (occasionally), but would not say a word when an adult practitioner asked a question. The questions would usually require the answers which were available on the placard the child held, so, to any question they could simply point to the placard, rather than talk. The presence of a wall between “us” and “them” was palpable.

Reflecting on this visit, I visualized what a child might feel like in a facility, away from family, among strangers, deprived of their liberty. What was easily discernible was that the children were physically constrained—by boundary walls, gates, locks and guards. It was also evident that the children were constrained in their daily choices—what to eat, wear, how to stand and walk, and what to say. These disguised boundaries, no less potent than the physical ones, must also constrain them in their life choices, including education and employment. However, something that I fathomed later, was the wall of self-deprecation, building inside the children’s own minds, constraining their self-image, potentialities and life possibilities. I believe that they felt walled—from outside, as well as from inside.

What was this wall—invisible, yet persistent and seemingly insurmountable? How might this wall be dismantled? How to even create a small opening, or etch a small crevice? A crevice which might then become a window, that might grow bigger, and bigger, to eventually crumble the whole wall! In that way the children would be able to talk, share, communicate, and participate and attain their potential despite the experience of coming into conflict with the law.

² A “bachcha barrack” is a barrack intended for children.



WALLED (Walled-I): In this painting, I juxtapose the silhouette of a young person with long rows of cells in a state-run facility, highlighting the power differential between the state and the child. The walls portray physical barriers as well as those imposed by law and legal practice. The row of young people in the background (added digitally) represents the positioning of children in conflict with the law as objects of law and policy, merely files and numbers. Using scale and perspective, I depict the walls as insurmountable for the walled children.

[D] PRESENTING FINDINGS THROUGH “WALLED”

In my quest to understand the wall that “walled” children in conflict with the law, I pursued academic study and research. As part of my MA in Sociology of Childhood and Children’s Rights at University College London (2021-2022), I studied challenges that children in conflict with the law in India face in their right to participation. My research drew upon the

new sociology of childhood as a theoretical framework, and children’s rights with a focus on Article 12 UNCRC and the Indian JJ Act.

The key research finding from this study is that the law and legal practice in India construct children as future becomings and as objects of law and policy. Children in conflict with law are seen as deserving protection, and not so much deserving participation. However, my findings also show

that, when practitioners listen to children, children feel safe in sharing their views.

I move now to present some of the research findings by linking them to *Walled*.

Children’s participation rights are merely a theoretical concept in the law

I found that the JJ Act 2015 in principle recognizes the right to participation of children in conflict with the law. However, the statute does not lay down the procedures for implementing children’s participation. To quote a research participant:

I think the law does recognise the right to participation of children in conflict with the law but does the bare minimum. For example, in section 8(3) [of the JJ Act], it is the duty of the Juvenile Justice Board to ensure child’s participation throughout the legal proceedings. But this section means nothing ... it’s just theory. It has not been developed into [a] process ... so, children are heard out of kindness and concern, not as a right (Participant 2).

During interviews I asked all the participants to enumerate children’s rights that they considered significant. Five of the six participants listed the protection

and provision rights and did not even mention participation rights. I found that practitioners were aware of their duty to ensure that children had access to water, food, toilet, rest and a safe place, but mostly unaware of their duty to implement children’s participation rights, for example providing access to their parents, lawyer, translator or by sharing relevant information or documents.

My analysis suggests that there are two reasons for overlooking participation. First, the law prioritizes survival rights—these are urgent—and so practitioners feared for consequences following a mishap with a child in their custody. Second, practitioners view children as incompetent to participate in key legal decisions.

Participation is constructed as children’s duty rather than their right

This research suggests that participation of children in conflict with the law has different meanings for different practitioners. For example, the frontline police officers often constructed the child’s participation as the child’s duty to answer their questions and to provide the information or evidence that the police needed. During their respective interviews, two participants stated:



SILENCED (Walled-II): In this painting I represent children's silence, and what it might say. I depict the emotions of helplessness in not being able to make sense of what is happening, not being heard, and not being believed, further extenuating the experience of being "walled".

I feel, yes, participation is very important, because it helps us connect with the child. If the child participates and discloses whatever he knows, then it helps us unravel the mystery ... and to rehabilitate him. Suppose the child hails from a far-off place, then we can get him back to his hometown (Participant 5).

Sometimes [a] child might have committed a heinous offence. If the child participates, it'll also help the child in changing or correcting himself from

what he has done and to make him realise that he did a wrong thing (Participant 6).

Here participation is not seen as a right of the child that casts a duty on adult practitioners to create the right atmosphere for children to be able to trust and share. Participation is rather constructed as a duty imposed on the child to aid in investigation and/or their own correction or rehabilitation. I found that such a duty is subjectively imposed on the child irrespective of their

trauma, mental status, readiness and consent. And a child’s inability or unwillingness to answer or talk is considered as the child’s non-cooperation, refusal to participate, disobedience or even misbehaviour.

Second, the child must not only speak, but speak the truth. At least three participants reported that children are often viewed as “lying” and/or being “manipulative” (Participants 1, 2, 4, 5), and they are seen to be doing so for the purpose of getting away from the “clutches of law” (Participant 6) or avoiding the penalty that is due to them. One of the participants reported:

It is a very common experience with children in conflict with the law aged 16 or 17 years, that police reported them as 18 or above. So, I would ask the children, why didn’t they inform the police about their age at the time of apprehension. And children told me that they did inform the police officer on duty, but the officer did not believe them. Even when they produced documents as proof of age, the police questioned the veracity of the document (Participant 1).

Thematic analysis across the data set revealed frequent denial of children’s right to participation by disbelieving them, what Baxi calls “falsification of testimony” (2013: 273). I found that such

falsification of a child’s testimony is more likely to occur when the adult practitioners expect the child to confirm to their narrative or script. If the child contradicts the version of the practitioners, then the child is seen as lying and what they say is discredited. This is reflective of the underlying subordinate status of the child vis-à-vis the adult practitioners making their own purpose and objective more significant than the child’s needs, ability and consent. Here the child is positioned as an instrument to achieve the “high and mighty ends of legal processes” (Participant 2).

Third, practitioners whom I interviewed did not see it as their duty to make sure that the children participate. Also they seemed to do little to enable children to be involved in decision-making, for example by sharing information, documents, or explaining the processes.

Children’s participation begins when adults listen

When asked for a specific example of listening to a child in conflict with the law, four participants could not recollect one. They said that children generally did not speak in their presence. They also informed me that listening to children was often constrained by time, workload, legal procedures and a predetermined official



VIOLENT CHILDREN ARE SAYING SOMETHING (Walled-III): *When “walled”, often the only alternative available to communicate with the system, may be violence, or other such behaviours considered disruptive and unacceptable by adult practitioners.*

agenda of meetings with children. However, one participant narrated a courtroom scene, which he qualified as a “rare” occurrence:

what happened next was so unusual. This child was probably angry. As soon as he arrived in the court, he started shouting, really loudly! He started abusing the magistrate. He uttered such offensive statements about the magistrate herself, [that] the court staff pounced on him ...

what happened next was *even more unusual*. The magistrate just raised her hand and said, nobody will touch him. Everyone

backed off. And this child went on abusing her for another 15 minutes. And then he was done and exhausted. The magistrate showed no anger, absolutely nothing ... and then a beautiful process unfolded from there on ... the boy started talking sense, she listened intently. He cried, apologised, and continued to share his story. She listened to him and recorded his statement in his words (Participant 2, original emphasis).

For Participant 2, when “magisterial arrogance gives way” to humility, listening begins. I found

that children communicate in various forms, however, adults are likely to view their communication as immature, demeaning and disrespectful. They respond to children’s communication with ridicule, aggression, or retaliation (Participant 2). “Violent children are saying something”, but are the practitioners listening? (Participant 2).

Yet, on rare occasions, when adult practitioners create a space for children to talk freely and openly, “a beautiful process unfolds” (Participant 2). Children’s

participation begins when adults listen to them.

Listening gives a sense of safety and confidence to children, enabling them to participate

Two participants who had extensive experience of listening to children in conflict with the law believed that adults listening to children restores children’s confidence and sense of safety.

listening to a child’s story ... for 2-3 hours, on [the] phone. Of course, I



THE RIGHT TO PARTICIPATION OF “WALLED” CHILDREN BEGINS WHEN ADULTS LISTEN TO THEM (Walled-IV): *To etch a crevice in the wall, all it may take, is to listen to children in conflict with the law. Listening may enable children to regain their confidence that they lose due to their past experiences of neglect, abuse and violence.*



CHILDREN AS HUMAN BEINGS IN THE PRESENT (Walled-V): *In this painting I rely on the theoretical premise that children, even when “walled”, are agents in the construction of their lives and those of others whom they share their lives with. Children in conflict with the law are experts on their own lives and competent to provide valuable insights for decision-making, as well as for law and legal practice with their positional knowledge, should practical and reasonable opportunities to do so be available.*

wasn't giving legal advice ... the child did not want anything from me. But just that the child probably [felt] safe ... validated or heard. When a person in authority, at least in the mind of the child ... listens to the child, that gives them a sense of safety and assurance (Participant 2).

I met a boy who was caught for stealing INR 10,000 [£100]. He would use abusive language towards everyone. When I first attempted to speak

to him, he abused me as well ... I could finally gain his trust, only because I listened and listened to him, meeting after meeting. And then his behaviour completely changed ... and I got to know of the hard life he had had till that point in time ... Much later, he said to me ... that when he felt that he was being listened to, he felt his dignity returning, that he was someone worth listening to. And he liked the feeling (Participant 1).

Listening to children strengthens professional practice and policy

I found that listening to children has a profound impact on the listener and not only on children. Participants in my research shared that listening to children’s stories opened a whole new world of knowledge and information for them. They had to learn about the various strategies that children deploy in dealing with their difficult circumstances. They also learnt about children’s views and perspectives, of which they had been completely ignorant.

Participant 2 shared in his interview that a young person confessed before him to committing a murder. The young person had to protect his sister from sexual assault by the person he murdered. According to his notion of masculinity and being the only *man* in the family, he was confident that he did the right thing. By listening to this boy, the practitioner said that he learnt to view children’s experiences through an intersectional lens, and from the children’s standpoint. He found this learning useful for his future legal practice.

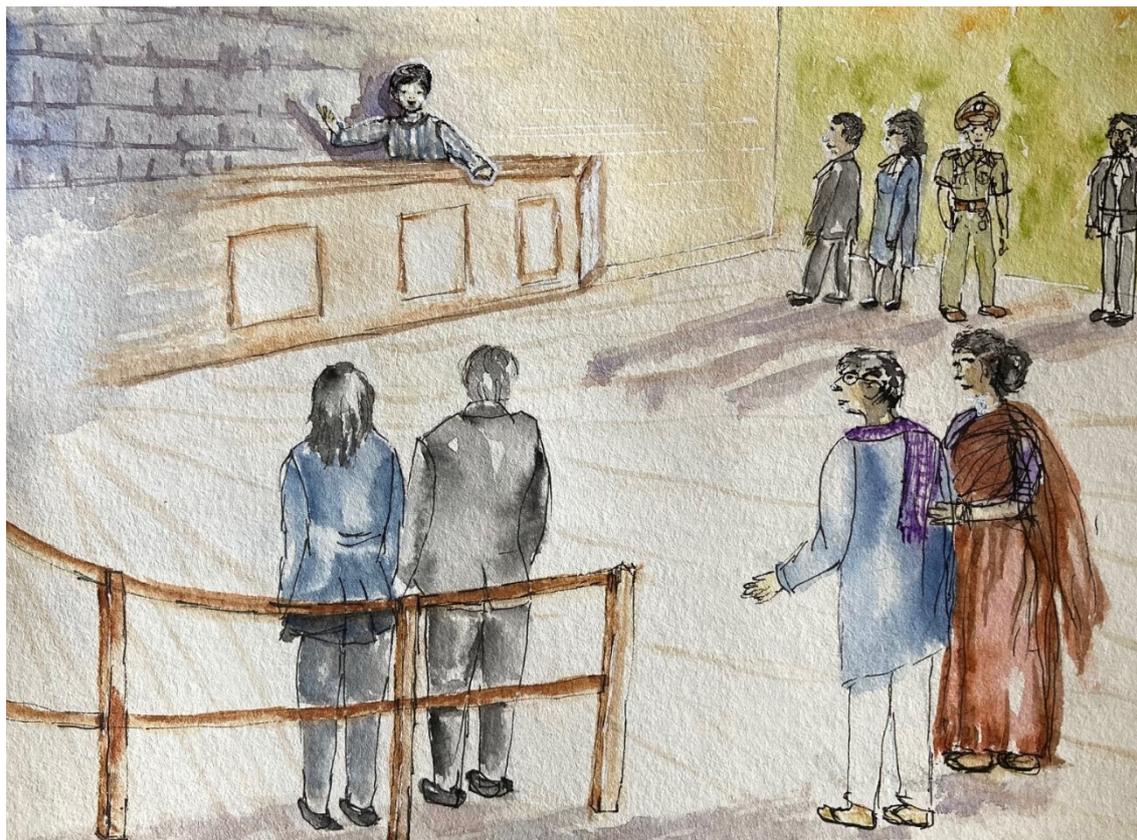
Participant 2 also said that his legal practice, including courtroom arguments and legal paperwork, became stronger because of the knowledge he gained from listening

to children, including significant clues, bits of information and evidence, as well as thinking about alternative interpretations of their legal rights.

Participant 5 believed that child-friendly approaches are often understood as designated spaces decorated with balloons and cartoons. He recommended a national consultation and review of law and legal practice by children with experience of conflict with the law. From his four decades of experience of adjudication in children’s rights, including policy issues, he said that policy that does not take into account the perspectives of children, is incomplete at best and “oppressive at times” (Participant 5).

[E] CONCLUSION

To briefly summarize the key findings of my research, listening is the foundation of the right to participation of children in conflict with the law. When listened to by adult practitioners, the agency of children in conflict with the law may be restored and they may feel empowered to exercise participation rights. Listening also helps adult practitioners understand the nuances of children’s lives, experiences and views—thus enriching their professional practice and decision-making.



ADULT PRACTITIONERS MUST ALLOW THE SPACE TO BE TAKEN OVER BY CHILDREN (Walled-VI): *In this painting I depict a scenario where a child feels empowered to speak, express, talk and share what they think, feel and value. And adult practitioners and key adults in the child's life give up their power pedestals, acknowledge the child's knowledge and expertise alongside their own, and embrace the humility of being a listener. This could potentially allow light to expel the darkness in the walled lives of children in conflict with the law. The onus is on them to create real and effective opportunities for children to participate.*

However, I found that listening to children by adult practitioners in the juvenile justice system in India is predominantly structured, and practitioners faced multiple systemic and socio-psychological barriers in listening to children. The front-end practitioners at police stations, courts and care institutions tended to frame children as lying or unreliable. Practitioners viewed children's

participation as the children's duty rather than their right. No listening or minimal listening just to tick certain boxes precludes the "rich human dialogue" that the "welfare" approach to juvenile justice requires (McDiarmid 2007: 264).

As a practical method of strengthening children's participation rights in the juvenile justice

system, I recommend that various measures should be taken to strengthen the capacity of adult practitioners to listen to children in conflict with the law. The practitioners must be supported in listening through a review of their workload and time use, capacity-building and creating more opportunities for them to interact with children. Such interactions must be in a place, time and format that make children feel safe and enable them to trust and share.

If the juvenile justice system is to realize its objective of working in the best interests of the child, it must allow “the space to be taken over by children” (Participant 2). The real and long-term solutions to realization of rights of children in conflict with the law must be the ones “that children themselves have identified and can recognise as their own ... as key stakeholders in their own future” (Martin & Parry-Williams 2005: 24).

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