



सत्यमेव जयते

Resource Book for Commissions for Protection of Child Rights



Protect the Child—Build the Nation

Resource Book for Commissions for Protection of Child Rights

Developed by National Commission for Protection of Child Rights with support from UNICEF India

First Edition, Published in December 2016

Cover painting by: Sumi Modi, St Mary's Convent School, Bhopal

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Protect the Child—Build the Nation



December, 2016

The State shall, in particular, direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Constitution of India,
Directive Principles: Article 39 F

The Central Government shall, by notification, constitute a body to be known as the National Commission for Protection of Child Rights to exercise the powers conferred on it, and to perform the functions assigned to it under this Act.

The Commissions for Protection of Child Rights Act, 2005

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Preface

The Constitution of India guarantees fundamental rights to all children in the country and empowers the State to make special provisions for them for their protection and development. The State is responsible for ensuring that childhood is protected from exploitation and from moral and material abandonment. The Government has acknowledged its commitment and has made laws, policies, plans and programmes to this effect. The enactment of the Commissions for Protection of Child Rights (CPCR) Act, 2005 for setting up of National and State Commissions for Protection of Child Rights was one such important step.

The National Commission for Protection of Child Rights (NCPCR), set up in 2007 and the constitution of State Commissions subsequently, together have championed the cause of children increasingly and are playing an active role to ensure that the best interest of children is protected in all policies and actions and is in consonance with the child rights perspective as enshrined in the Constitution of India and also in the UN Convention on the Rights of the Child.

However, there are challenges in the qualitative and quantitative implementation of all the government policies and programmes in such a large country, having great diversity in economic attainments and cultural practices, and with children comprising about 39% of its population. While there are gainful achievements in some areas, a large number of children are still vulnerable and marginalized and in need of care and protection. Apart from the traditional problems of poverty, etc., technology-driven challenges on current issues like child pornography and cyber crime, along with child sexual abuse, need to be addressed urgently. To make it easier for children themselves to report child sexual abuse, the launch of POCSO e-box by NCPCR for reporting of such cases is an important initiative to enhance children's confidence.

In this context, it becomes imperative that the National and State Commissions proactively act together as a team (of 35 organizations as on date) and work in tandem for the safety and protection of children.

The Resource Book is an attempt to provide a ready reference for the Commissions. It elucidates their roles with the responsibility of working towards bringing about systematic changes for the advancement of child rights and provides a succinct framework for examining and responding to various child rights issues specifically mentioned in the CPCR Act, 2005. It also clearly defines the jurisdictions of the Commissions with respect to their role as quasi-judicial statutory bodies and also elaborates upon various coordination mechanisms with other stakeholders such as the CWCs, JJBs, law enforcement agencies and Judiciary. In short, it is a handy, easy-to-use guide on all important aspects of child rights.

I hope that the Resource Book shall prove to be a useful tool, and help us in our regular activities to address various issues relating to children, so that our vulnerable children are better protected and have a better chance of growing up well.


(Stuti Kacker)

Date: 6th December, 2016

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LIST OF ABBREVIATIONS

AEP	Adolescent Education Programme
AHTU	Anti-Human Trafficking Unit
ARSH	Adolescent Reproductive and Sexual Health
ART	Anti-Retroviral Therapy
ATR	Action Taken Report
AWC	Anganwadi Centre
CARA	Central Adoption Resource Authority
CBR	Community Based Rehabilitation
CCI	Child Care Institutions
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CICL	Child in Conflict with Law
CNCP	Child in Need of Care and Protection
CPCR Act	Commissions for Protection of Child Rights Act, 2005
CrPc	Code of Criminal Procedure
CSR	Corporate Social Responsibility
CWC	Child Welfare Committee
CWPO	Child Welfare Police Officer
DCPU	District Child Protection Unit
DSEL	Department of School Education and Literacy
DVA	Domestic Violence Act
ECCD	Early Childhood Care and Development
ECCE	Early Childhood Care and Education
FIR	First Information Report
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
ICCPR	International Covenant on Civil and Political Rights

ICDS	Integrated Child Development Services
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICPS	Integrated Child Protection Scheme
ICTC	Integrated Counselling and Testing Centres
ILO	International Labour Organization
IPC	Indian Penal Code
ITPA	Immoral Traffic (Prevention) Act
JJ Act Amended, 2006	Juvenile Justice (Care and Protection of Children) Act, 2000 and Amendment Act, 2006
JJ Act, 2015	Juvenile Justice (Care and Protection of Children) Act, 2015
JJB	Juvenile Justice Board
KSY	Kishori Shakti Yojana
MES	Modular Employability Scheme
MGNREGA	Mahatma Gandhi National Rural Employment Guarantee Act
MHA	Ministry of Home Affairs
MHRD	Ministry of Human Resource Development
MHS	Menstrual Hygiene Scheme
MLE	Ministry of Labour & Employment
MWCD	Ministry of Women and Child Development
NACO	National AIDS Control Organisation
NACP	National AIDS Control Programme
NALSA	National Legal Services Authority
NCLP	National Child Labour Project
NCPCR	National Commission for Protection of Child Rights
NCRB	National Crime Record Bureau
NCSC	National Commission for Scheduled Castes
NCST	National Commission for Scheduled Tribes
NCW	National Commission for Women
NGO	Non-Governmental Organisation
NHRC	National Human Rights Commission

NHRI	National Human Rights Institution
NPC	National Policy for Children
NPEGEL	National Programme for Education of Girls at Elementary Level
PAB	Project Approval Board
PC & PNDT	Pre-Conception and Pre-Natal Diagnostic Techniques
PCMA	Prohibition of Child Marriage Act
PHR Act	Protection of Human Rights Act, 1993
PIL	Public Interest Litigation
PLHIV	People Living with HIV/AIDS
POCSO Act,2012	Protection of Children from Sexual Offences Act, 2012
PPP	Public-Private Partnership
PPTCT	Prevention of Parent to Child Transmission
RTE Act, 2009	Right of Children to Free and Compulsory Education Act, 2009
RTI	Right to Information
SAARC	South Asian Association for Regional Cooperation
SC	Scheduled Caste
SCPCR	State Commission for Protection of Child Rights
SDIS	Skill Development Initiative Scheme
SHRC	State Human Rights Commission
SIR	Social Investigation Report
SLSA	State Legal Services Authority
ST	Scheduled Tribe
UDHR	Universal Declaration of Human Rights
UNCRC	UN Convention on the Rights of the Child, 1989
UNICEF	United Nations Children's Fund
UPR	Universal Periodic Review
UT	Union Territory
WIFS	Weekly Iron and Folic Acid Supplementation

GLOSSARY

Term	Meaning
Affidavit	A written statement in the name of a person called the deponent by whom it is voluntarily signed and sworn to or affirmed
Agenda	List of business to be transacted
Authority	A person or group of persons authorised to exercise power by Law or Rules. Authority would include authorities created under or by a statute as well as non-statutory authorities performing public functions.
Autonomous Body	Institutions or organisations set up as autonomous organisations under specific statute or as a society registered under the Societies Registration Act, 1860 or Indian Trust Act, 1882 or other statute
Bail	Temporary release from imprisonment on furnishing surety or security to appear for trial; the security so given
Juvenile Justice Board	Juvenile Justice Board constituted under Section 4(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015
Bailable offence	An offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force (Section 2(a) of CrPC, 1973)
Charge sheet	A formal document of accusation prepared by the police
Child/Juvenile	A person who has not completed eighteenth year of age under Section 2(12) and Section 2(35) of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the UN Convention on the Rights of the Child

Term	Meaning
Child in need of care and protection	<p>A child:</p> <ul style="list-style-type: none"> (i) Who is found without any home or settled place of abode and without any ostensible means of subsistence; or (ii) Who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or (iii) Who resides with a person (whether a guardian of the child or not) and such person: <ul style="list-style-type: none"> a) Has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of the child; or b) Has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or c) Has killed, abused, neglected or exploited some other child or children and there is reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or (iv) Who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after it or having parents or guardians unfit to take care of it, if found so, by the Board or Committee; or (v) Who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for it and protect the well-being and safety of the child; or (vi) Who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or (vii) Who is missing or a runaway child, whose parents cannot be found after making reasonable inquiry in such a manner as may be prescribed; or (viii) Who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or (ix) Who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or

Term	Meaning
	<p>(x) Who is being or is likely to be abused for unconscionable gains; or</p> <p>(xi) Who is a victim of or affected by any armed conflict, civil unrest or natural calamity; or</p> <p>(xii) Who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage; under Section 2(14) of the Juvenile Justice (Care and Protection of Children) Act, 2015</p>
Civil Case	A lawsuit brought to redress a private wrong such as a breach of contract, encroachment, or negligence; or to enforce civil remedies such as compensation, damages or injunction.
Civil Court	A Court which adjudicates disputes of a civil nature and is governed by the Civil Procedure Code, 1908
Cognizable offence	An offence for which a police officer may in accordance with the First Schedule of the CrPC or of any other law for the time being in force arrest without a warrant (Section 2(c) of CrPC)
Complainant	A person who makes a formal accusation in court of law
Child Welfare Committee	Child Welfare Committee constituted under Section 27(1) of the Juvenile Justice (Care and Protection) Act, 2015 in order to exercise the powers and discharge the duties conferred on such Committees in relation to child in need of care and protection under the Juvenile Justice (Care and Protection of Children) Act, 2015. The Committee has the authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children in need of care and protection as well as to provide for their basic needs and protection under Section 29(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015
Convention	Agreement, any temporary treaty; an agreement between States; of less importance than a Treaty
FIR	First Information Report of the alleged offence lodged with the police

Term	Meaning
Fit Facility	Is a Facility being run by governmental organisation or a registered voluntary or non-governmental organisation, prepared to temporarily own the responsibility of a particular child for a specific purpose, and such facility is recognised as Fit for the said purpose, by the Committee, as the case may be, or the Board after due inquiry under sub-section (1) of Section 51 of the Juvenile Justice (Care and Protection of Children) Act, 2015
Fit Person	Any person, prepared to own the responsibility of a child, for a specific purpose, and such person is identified after due verification of credentials made in this behalf and recognised as Fit Person for the said purpose, by the Committee or, as the case may be, the Board, to temporarily receive a child for care, protection and treatment of such child for a specified period and in the manner, as may be prescribed, under sub-section (1) of Section 52 of the JJ Act, 2015
Full Bench of NCPDR	Full Bench would comprise three (or more) members; or four members including the chairperson, NCPDR to form the quorum at every meeting of the Commission under Rule 18 of NCPDR Rules, 2006. At least two members of the Commission for transaction of business outside headquarter as and when previously approved by the Chairperson under Rule 21 of NCPDR Rules, 2006
Grievance	A wrong or hardship or injustice suffered, whether real or perceived, which form grounds for a complaint
Harassment	Unwanted conduct on the grounds of race, gender, sexual orientation etc. which has the purpose or effect of either violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the person
Hazardous Work	Work that is likely to jeopardise the health, safety or morals of young persons (ILO Convention-138)
Hearing	Listening to pleadings, evidence and arguments specially in a court of law; the trial of a case

Term	Meaning
Human Rights	The term signifies rights relating to life, liberty, equality and dignity of individuals guaranteed by Constitution or embodied in international covenants and enforceable by courts in India (Protection of Human Rights Act, 1993)
Illegal Acts	Act or omission in violation of a law or a rule which has the force of law
Inquiry	The act of inquiring; or the act of seeking information by questioning, and documentation or evidence
Interim order	A temporary order
Investigation	All the proceeding under CrPC for the collection of evidence conducted by a police officer or by any other person (other than a magistrate) who is authorised by the magistrate in his behalf (Section 2 (h) of CrPC)
Child in Conflict with Law	A child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence. See Section 2(13) of the Juvenile Justice (Care and Protection of Children) Act, 2015
Local Authority	A municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the government with the management or control of municipal local fund
Non-Bailable Offence	Any offence other than a bailable offence (Section 2(1) of the CrPC, 1973)
Non-Cognizable Offence	An offence for which a police officer has no authority to arrest without a warrant (CrPC S.2 (l))
Observation Home	An Observation Home is established and maintained in every district or group of districts by state government, either by itself, or through a voluntary or non-governmental organisation, and is registered as such, for the purposes specified in sub-section (1) of Section 47 of the Juvenile Justice (Care and Protection of Children) Act, 2015
Offence	Any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under Section 20 of Cattle Trespass Act, 1871 (1 of 1871) (Section 2 (n) of CrPC)

Term	Meaning
Place of Safety	Any place or institution (not being a police lockup or jail), established separately or attached to an Observation Home or a Special Home, as the case may be, the person in-charge of which is willing to receive and take care of the children alleged or found to be in conflict with law, by an order of the Board or the Children’s Court, both during inquiry and ongoing rehabilitation period after having been found guilty for a period and purpose as specified in the order. Section 2(46) of the Juvenile Justice (Care and Protection of Children) Act, 2015
Principles of Natural Justice	Basic principles of law to ensure that an accused gets a fair hearing. One of these is that a person has both the right to be heard and the right to an impartial hearing. These rights are known as the Principles of Natural Justice. Generally speaking, all parties affected by a decision must have been: <ul style="list-style-type: none"> • Given adequate notice of a proposed action, and • Given the opportunity to present their case before an impartial decision making authority
Probation	The action or a process of testing or putting to proof a system of releasing on suspended sentence during good behaviour, young persons and especially first offender and placing them under the supervision of a Probation Officer who acts as a friend and advisor.
Probation Officer	An officer appointed by the State Government as a Probation Officer, under the Probation of Offenders Act, 1958 or the Legal-cum-Probation Officer appointed by the State Government under District Child Protection Unit
Prosecution	The investigation and carrying on the legal proceedings against the person
Prosecutor	One who institutes and carries on proceedings in a court of law especially in a criminal court
Public Interest Litigation (PIL)	Litigation for the protection of public interest
Public Record	Record of transaction etc. maintained by public authorities
Public Servant	A holder of public office
Prima facie	On the face of it; at first sight

Term	Meaning
Quasi-judicial Powers	Sharing the qualities of and approximately to what is judicial; essentially judicial in character but not within the judicial power or function nor belonging to the judiciary as constitutionally defined
Quorum	The minimum number of members of any body of persons
Ratification	Approval by word or conduct of that which was improperly or unauthorisedly performed in the first instance; confirmation; formal sanction
Relief	Deliverance from grievance, legal redress or remedy to those in need or difficulty
Sentence	Judicial determination of the punishment to be inflicted on a convicted criminal
Sittings	The active presence (meeting) of body of persons in their seats with authority to transact business
Social Audit	A systematic procedure of measuring, understanding, reporting and ultimately improving an organisation's social and ethical performance.
Special Home	An institution established by a State Government or by a voluntary or non-governmental organisation, registered under Section 48 of the Juvenile Justice (Care and Protection of Children) Act, 2015 for housing and providing rehabilitative services to children in conflict with law, who are found, through inquiry, to have committed an offence and are sent to such institution by an order of Board
Special Juvenile Police Unit	A unit of the police force of a district or city or, as the case may be, any other police unit like railway police, dealing with children and designated as such for handling children under Section 107 of the Juvenile Justice (Care and Protection of Children) Act, 2015
Sub-judice	Pending before court
Summons	An authoritative call to attend a specified place for a specified purpose; an order by which a person is called to appear before a court, judicial officer, etc.
Suo motu action	On its own volition

Term	Meaning
Trafficking	Trade in humans, most commonly for the purpose of sexual slavery, forced labour or commercial sexual exploitation for the trafficker or others; or for the extraction of organs or tissues, including surrogacy and ova removal; or for providing a spouse in context of forced marriages
Treaty	A formal agreement especially between states
Treaty Body	Committees of experts known as the 'treaty monitoring bodies' or 'treaty bodies' which oversee implementation of the core international human rights treaties. The treaty bodies consist of independent, impartial members who are elected by the States Parties to the treaty
Trial	Judicial examination, in accordance with law, of a case either civil or criminal, of the issues between the parties whether of law or fact before a court that has jurisdiction over it
Warrants Case	A case relating to an offense punishable with death, imprisonment for life or imprisonment for a term exceeding two years (Section 2 (x) of CrPC, 1973)
Writ	A written command, precept, or a formal order issued by a court directing or enjoining the person or persons to whom it is addressed to do or refrain from doing some act specified therein
Writ of Mandamus	Writ or command issued by a higher court to lower court

INTRODUCTION

INTRODUCTION

Children are the most valuable asset of any nation and if given a conducive and enabling environment, every child blossoms into a productive adult and a responsible citizen of the country. Thus, proper child development is very important for the holistic growth of society and the best way to develop national human resources is to take good care of children. India is the home to the largest child population in the world.

The Constitution of India has granted equal rights to all its citizens including children, irrespective of gender, age, caste and economic status. Child rights are mainly categorised into four, covering all aspects of their life, i.e., Right to Survival, Right to Protection, Right to Development and Right to Participation. Several important legislations have been enacted in line with our constitutional provisions to give effect to these rights. Some of the important legislations include the Commissions for Protection of Child Rights Act, 2005, Juvenile Justice (Care and Protection) Act, 2015, Protection of Children from Sexual Offences (POCSO) Act 2012 and Right of Children to Free and Compulsory Education (RTE) Act, 2009 which inter-alia create a conducive and protective environment for the children of our country.

The coming into force of the Commissions for the Protection of Child Rights (CPCR) Act, 2005 ushered in a new phase in the implementation of measures by the government to promote and protect children's rights. This provided for the constitution of a National Commission for Protection of Child Rights (NCPCR) and State Commissions for Protection of Child Rights (SCPCRs) 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 (UNCRC).

Beginning with the establishment of NCPCR in 2007 at national level, there are now 34 Commissions for the Protection of Child Rights in the states as well which have been established to inquire into violations of Child Rights and to undertake other activities for protection and promotion of Child Rights as mandated in various related legislations.

Children deserve the best and it is important that the Commissions for the Protection of Child Rights institutions work to achieve the full objectives of their mandate. It

is therefore, both a privilege and an enormous responsibility to serve in a statutory Commission for the Protection of Child Rights. It provides an opportunity to bring about systematic changes for advancing Child Rights.

This Resource Book has been developed to serve as a ready reckoner for persons associated with the Commissions for Protection of Child Rights (CPCR). It provides a succinct framework for examining and responding to various child rights issues specifically mentioned in the CPCR Act, 2005. The objective is to provide a framework for better working of the Commissions and indicate potential actions.

The Constitution of India, the National Policy for Children, 2013, the UNCRC and other international human rights conventions ratified by India provide the ethical, policy and legal foundation on which the Commissions for the Protection of Child Rights base their vision and act as a voice for the country's children.

RIGHTS BASED APPROACH AS A FRAMEWORK FOR FUNCTIONING OF THE COMMISSIONS

RIGHTS BASED APPROACH AS A FRAMEWORK FOR FUNCTIONING OF THE COMMISSIONS

National Human Rights Framework

The Constitution of India

The human rights framework in India originates within the supreme law of the land, the Constitution of India. The Preamble, the Fundamental Rights, the Fundamental Duties and the Directive Principles of State Policy are the concrete constitutional provisions which have aspired to consciously translate the concept of human rights into a reality. While Civil and Political rights have been incorporated in Part III of the Constitution, i.e. Fundamental Rights, the Economic, Social and Cultural rights have been incorporated in Part IV of the Constitution, i.e. Directive Principles of State Policy.

The Constitution of India has given the rights of children a high priority. In addition to providing the fundamental rights such as right to equality and non-discrimination, right to life, right to freedom of religion, right against exploitation, it expressly mandates certain provisions for guaranteeing the rights of children.

Some of the provisions for children are: Article 15(3) that allows the State to make special provisions for children; Article 21A recognises the right of children (6 to 14 years) to free and compulsory education; Article 24 prohibits employment of children below 14 years of age in hazardous employment. The Directive Principles of State Policy, in the form of Article 39 (e) and (f) and Article 45 assigns certain duties on the State; Article 51A (k) imposes a fundamental duty upon parents or guardians to provide opportunities for education of their children or wards, as the case may be.

Legislation has been enacted in line with the constitutional provisions to give effect to the rights of children in the Constitution. To name a few: Right of Children to Free and Compulsory Education, Act 2009, Juvenile Justice (Care and Protection of Children) Act, 2015, Protection of Children from Sexual Offences Act, 2012. Under Article 32 of the Constitution, a litigation can be filed for the protection of 'public interest' by an aggrieved party or another third party or by the court itself (*suo motu*) before the Supreme Court of India.

Article 141 of the Constitution equates the Supreme Court's rulings as the 'law of the land' and it becomes a binding precedent for all courts and tribunals in the country's legal system as in the case *Geetha Hariharan and Another vs Reserve Bank of*

India [(AIR 1999, 2 SCC 228)] where the Supreme Court ruled that a Hindu mother also to be the natural guardian of a minor, and in the Supreme Court regarding deplorable living condition of children of parents following the Jogini custom (WP(C) No.627/2007).

Articles 32 and 226 of the Constitution together provide an effective guarantee that every person has a fundamental right of access to courts. Article 32 confers power on the Supreme Court to enforce the Fundamental Rights. It provides a guaranteed, quick and summary remedy for enforcing the Fundamental Rights because a person can go straight to the Supreme Court without having to go through the dilatory process of proceeding from the lower to higher court as he has to do in other ordinary litigation. The Supreme Court is, thus, by the Constitution, the protector and guarantor of fundamental rights.

The National Policy for Children (NPC), 2013¹

The Government of India (GoI) through this policy document replaced the previous National Policy for Children, 1974. This has 'reaffirmed the Government's commitment to the rights based approach in addressing the continuing and emerging challenges in the situation of children' to secure all their rights.

The Guiding Principles of the Policy are that all laws, policies, plans and programmes affecting children and all actions and initiatives of the national, state and local government in all sectors are to respect and uphold these principles and all provisions of this Policy. The key priorities of the NPC are child survival, health, nutrition, development, education, protection and participation.

Additional responsibilities to be taken forward by the State include: Advocacy and Partnerships, Co-ordination, Action and Monitoring, Research, Documentation and Capacity Building, Resource Allocation and Review of Policy once in five years in consultation with all stakeholders.

Under Section 6.5, the NCPCR and SCPCR have been entrusted with the responsibility to 'ensure that the principles of this Policy are respected in all sectors at all levels in formulating laws, policies and programmes affecting children'.

International Human Rights Framework

The Constitutional provisions have been greatly influenced by the concept of human rights contained in the United Nations Declaration of Human Rights (UDHR).² India is also a signatory to the six core international human rights covenants/

conventions. By ratifying these documents, GoI is obligated to protect individuals and groups against human rights abuses and take positive action to facilitate the enjoyment of basic human rights. It has also to put into place measures and legislations compatible with the treaty obligations and duties. Though these treaties are not legally binding documents, with Article 51(1) (c) of the Constitution directing the State to 'foster respect for international law and treaty obligations', over time they have tended to achieve the status of customary international law. Further, Article 253 vests the Parliament to enact laws to implement these treaties ratified by India.

United Nations Convention on the Rights of the Child (UNCRC)

This treaty exclusively focusing on children promotes and protects their rights and is the most widely accepted human rights treaty. It reaffirms the fact that children, because of their vulnerability, need special care and protection, and it places special emphasis on the primary care and protective responsibility of the family. It also reaffirms the need for legal and other protection measures for the child before and after birth, the importance of respect for the cultural values of the child's community and the vital role of international cooperation in securing children's rights.

It comprises 54 separate articles and 3 Optional Protocols. The entire document is based on four foundation principles: children should be free from discrimination; government policies should be based on the best interests of the child; children should survive and develop to their full potential; and children's views and perspectives are important and need to be heard. To date, 195 nations have ratified this important treaty.

India has incorporated the principles of this treaty in its recent laws and policies which include the JJ Act, 2015, the Commissions for Protection of Child Rights Act, 2005, the Protection of Children against Sexual Offences Act, 2012 and the National Policy for Children, 2013.

While ratifying the UNCRC, the GoI has expressed its reservation in implementing provisions of Article 32, particularly paragraph 2 (a),³ stating that children of different ages do work in India and though it has made regulatory provisions regarding hours and conditions of employment; it is aware that it is not practical immediately to prescribe minimum age for admission to each and every area of employment in India and undertakes to take measures for progressive implementation in accordance with its national legislation and relevant international instruments.

India's constitutional obligations and international commitment to the child rights based approach is reflected in its regular submission of periodic reports to the UN Committee on the Rights of the Child.

Human Rights Council and Universal Periodic Review⁴

India is an active member of the Human Rights Council (HRC) which in 2006 created the Universal Periodic Review (UPR), a unique process which involves a review of the human rights records of all UN Member States. The framework for monitoring is available on the NHRC website. India is currently preparing its third report for submission to the HRC for the next review slated in May 2017.

Core Principles and Standards Applicable to Commissions for Children

India's constitutional obligations, its National Policy for Children, 2013, its ratification of various UN treaty instruments, specifically the Convention on the Rights of the Child, and provisions in the CPCAR Act and NCPCR and SCPCR Rules imply that its human rights based approach must be guided by the principles of universality, non-discrimination, the best interests of the child, the right to survival and development, the indivisibility and interdependence of human rights, accountability and respect for the voice of the child. It also calls for increasingly investing in developing the capacity of children to claim their rights by providing them a voice and space to participate in decisions affecting themselves. Commissions for the Protection of Child Rights and all the personnel working on their behalf are required to follow these principles and the code of conduct during the course of their work whether in direct intervention with the child or otherwise.

It is also important to understand that rights are not a sectoral issue. They cut across sectors, departments and ministries. Not only should a rights based approach be integral to the functioning of the Commissions, it is also mandated in the National Policy for Children, 2013 that Commissions for the Protection of Child Rights 'ensure that the principles of the Policy are respected in all sectors at all levels in formulating laws, policies and programmes affecting children'. This implies that the Commissions are responsible for mainstreaming the rights approach across all sectors in their decision-making on behalf of children.

More details and links to the key policy framework guiding the work of the Commissions are provided in **Annexure-I**.

Several legislations have been enforced for protecting children's rights. A detailed list is provided in the **Annexure-II** for reference to guide the work of the Commissions.

References

1. wcd.nic.in/policies/national-policy-children-2013 or http://wcd.nic.in/sites/default/files/npcenglish08072013_0.pdf
2. www.un.org/en/universal-declaration-human-rights/
3. https://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en#EndDec
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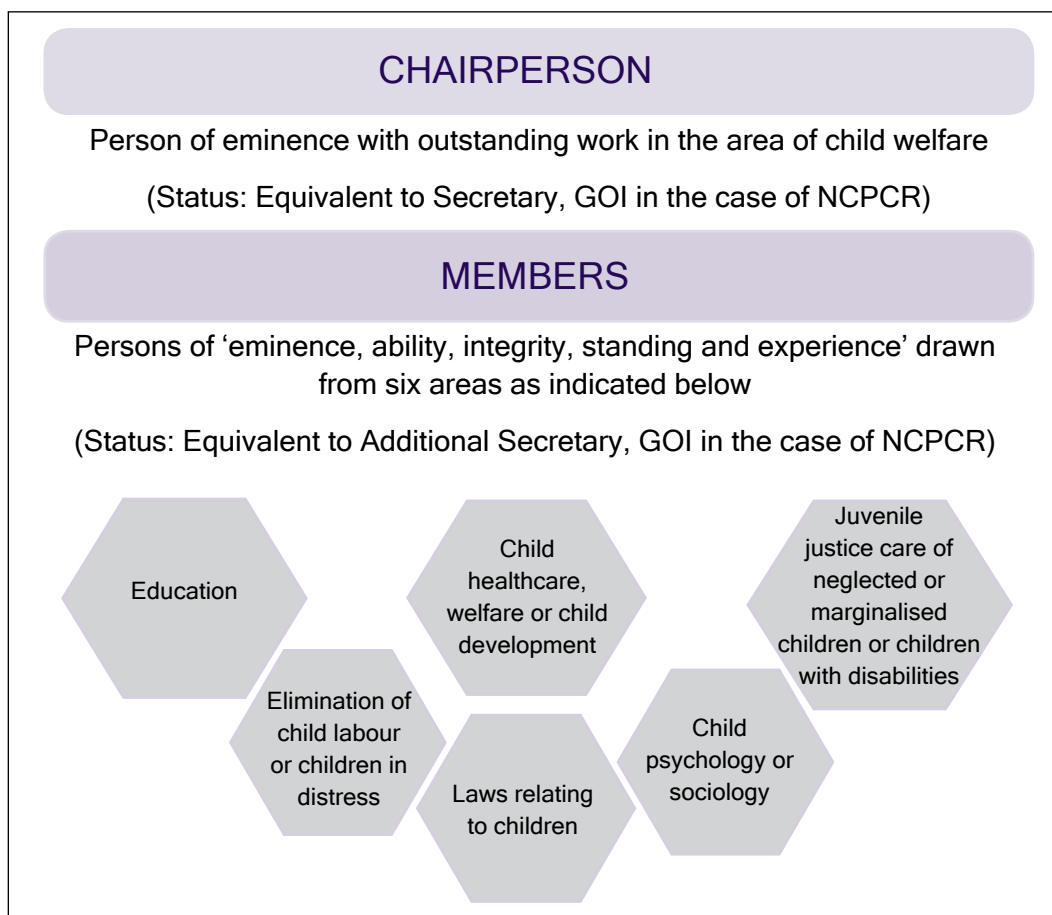
CONSTITUTION AND POWERS OF THE COMMISSION

CONSTITUTION AND POWERS OF THE COMMISSION

Constitution of the Commission, Qualifications, Terms of Appointment

According to the CPCR Act 2005, the Commissions shall comprise one Chairperson and six Members among whom at least two shall be women. The Chairperson should be a person of eminence with outstanding work in the area of child welfare and the

Figure 2.1 **Constitution of the Commission**



Members will be persons of 'eminence, ability, integrity, standing and experience' drawn from six areas: (a) education (b) child healthcare, welfare or child development (c) juvenile justice or care of neglected or marginalised children or children with disabilities (d) elimination of child labour or children in distress (e) child psychology or sociology and (f) laws relating to children. The Chairperson and Members have a term of three years and can serve a maximum of two terms of office and will cease to hold office on attainment of 65 years and 60 years respectively.

At NCPCR, while the status of the Chairperson is equivalent to Secretary, GOI, the Members will have the status equivalent to that of an Additional Secretary, GoI. For the SCPCRs, the Chairpersons and Members have been given a status which varies from State to State and UT to UT.

Establishment and Infrastructure

SCPCRs across the country are at varying stages of functioning. The State Government or UT administration is responsible for ensuring that SCPCRs have suitable premises which ideally should be located close to public transport and accessible to persons with disabilities and have extension desks where desired. Other facilities such as transportation, telecommunications, IT, etc. also have to be provided.

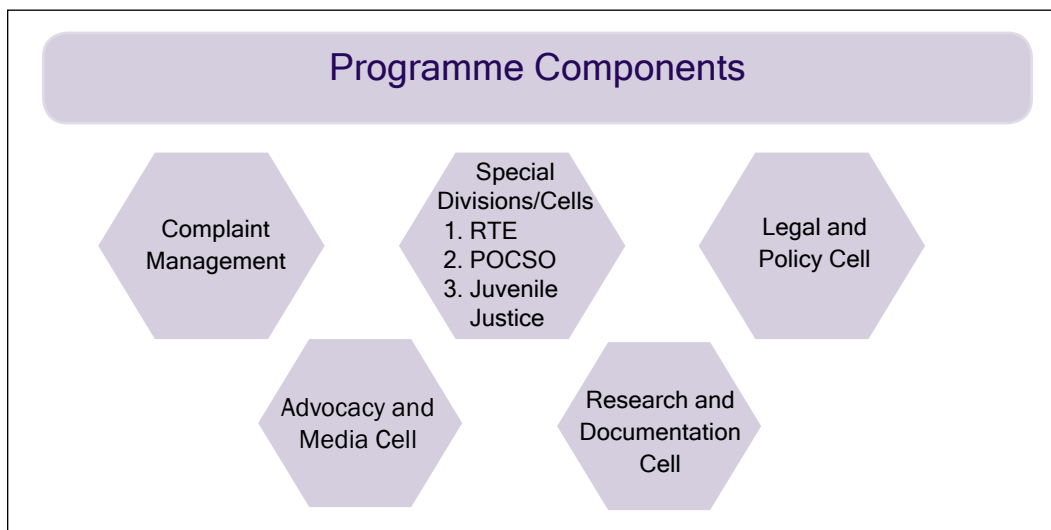
Human Resources and Organisational Development

To facilitate the optimal functioning of the Commissions for Protection of Child Rights, an adequate number of personnel may be recruited to support the Chairperson and Members and to execute their responsibilities.

Whatever the stage of development of an SCPCR, there are several key components for its establishment:

- Programme Components
- Infrastructure
- Human Resources and Organisation Development

Figure 2.2 Programme Components of the Commission



For the advantageous functioning of an SCPCR and delivery of mandated functions, there is a need to have separate units of administration to manage the different functions of the Commission such as:

- **Complaint Management** to manage complaints, take cognizance, ensure proper documentation, support in timely disposal, analysis and compilation of periodic reports on management of complaints.
- **Right to Education (RTE), POCSO and Juvenile Justice Cells** as individual units or combined units which would serve as specialised thematic structures for intervention. It is mandated under the RTE Act to have a separate RTE/ Education cell.
- **Legal and Policy unit** for providing legal advice for handling complaints, summons matters, responding to Court cases, filing petitions in Court, briefing on policy and substantive human rights issues such as reviewing laws, international standards.
- **Advocacy and Media** for promoting Human Rights Education; Media Relations, Publications and Communications.
- **Research and Documentation** to support with review of laws, policies and practices; development of subject guidelines, manuals, strategic plans and organisational policies; stakeholder analysis and gap analyses; compiling disaggregated data for the purpose of tracking State/UT progress or on specific issues of child rights violations as well as the development-related issues.

The Chairperson and Members of Commissions for the Protection of Child Rights lead the organisation and investing in their leadership and team building merits special attention. New Members would require orientation on laws and policies related to children and child rights.

Others whose human rights capacity needs to be developed are the Member-Secretary/Secretary who run operations and the 'Registrar' or person in a similar position and responsible for physically receiving, cataloguing and tracking incoming cases and related inquiries.

Resource persons with expertise in child rights issues, community issues, especially in the strategic planning process and also in writing reports, undertaking investigations, public inquiry work, and promotional activities need to be employed as consultants either on a full time or part-time basis as per need to provide meaningful inputs and expand the reach of Commissions for the Protection of Child Rights. They must be provided through training in substantive and thematic areas where found necessary.

Administration

Member Secretary (NCPCR)/Secretary (SCPCR)

The head of administration of NCPCR is the Member-Secretary,⁵ to be appointed by the Central Government and shall be an officer not below the rank of Joint Secretary or Additional Secretary to GoI. For the SCPCRs, the designation of the administrative head shall be the Secretary of the Commission in the rank of Secretary⁶ to the State Government. Central and State Government, as the case may be, shall make available to the Commission such other officers and employees as may be necessary for the efficient performance of its functions.

The Member-Secretary of NCPCR and Secretary of SCPCR shall be responsible for the proper administration of the affairs of their Commission⁷ and its day-to-day management. He/She shall have the power to execute all decisions taken by the Commission in order to carry out the functions⁸ and powers⁹ of the Commission¹⁰ and shall exercise and discharge such other powers and perform such other duties as may be prescribed by the Central/State Government. National Commission for Protection of Child Rights Rules, 2006 elaborates on the Member Secretary's powers and duties¹¹ and respective SCPCR Rules also incorporate the same. For instance at the NCPCR the roles of the Member Secretary have been elaborated in **Annexure-III**.

The present position of sanctioned posts at NCPCR is given in **Annexure-IV**.

Each Commission should also have a website that is comprehensive and provides all necessary information on how to approach and contact the Commission, file complaints, the activities of the Commission, reports, recommendations etc. A basic standard guidance on content for the website based on NCPCR's site is provided in **Annexure-V**.

Budget Allocation, Expenditure and Auditing

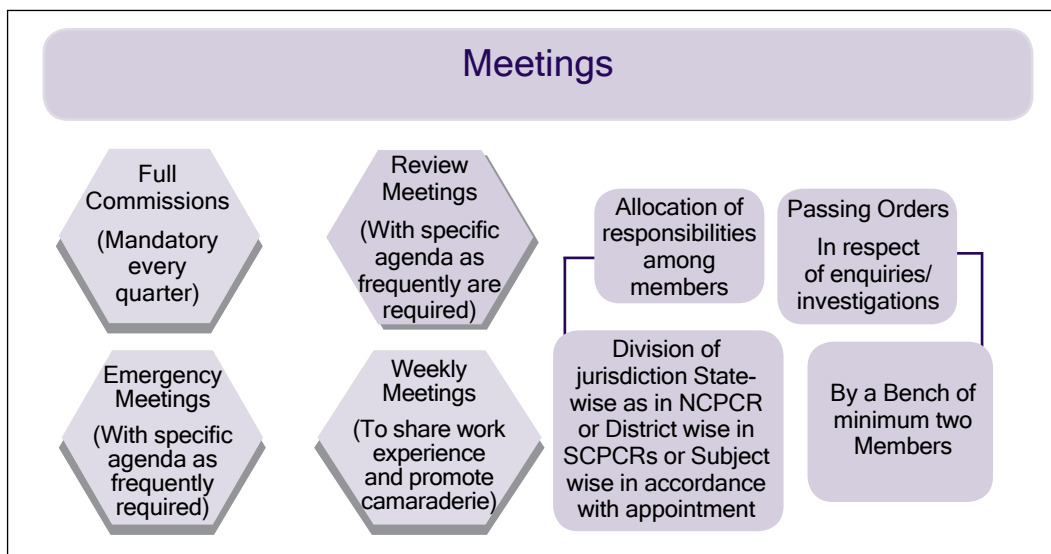
The Ministry of Women and Child Development (MWCD), respective State Departments for Women and Children are the primary source of budget allocation for NCPCR and SCPCRs with the Ministry of Human Resource Development (MHRD) and respective Departments of Education providing resources through Sarva Shiksha Abhiyan Scheme for undertaking the monitoring of the RTE Act. Additional resources could be mobilised for undertaking joint piece of work with other Ministries.

The Commissions may take technical support from development agencies for undertaking research studies, preparation of guidelines to further their mandate.

Transaction of Business

To support Commissions for the Protection of Child Rights in their work, the CPCR Act, 2005 and NCPCR Rules, 2006 provide for procedures for transaction of business by Commissions, recording of minutes of the meeting, authentication of orders and decisions, maintaining reports of follow-up action taken reports and transaction of business outside headquarters.

Figure 2.3 **Transaction of Business in Commissions**



The Commissions are to engage in the given tasks: allocation of responsibilities among Members, division of jurisdiction (state-wise or district wise) or subject-wise in accordance to appointment, passing orders by a Bench of minimum two Members authenticated by the Member-Secretary/Secretary of NCPCR/SCPCR as the case may be, organise meetings of the Full Commission (Mandatory every quarter), review meetings (with specific agenda as frequently as required), weekly meetings (to share work experience and promote camaraderie) and emergency meetings (with specific agenda as frequently as required).

The Commission is expected to meet regularly at its office and Full Commission Meetings¹² shall be held at such time as the Chairperson thinks fit but three months shall not intervene between its last meeting and the next. Four Members including the Chairperson shall form the quorum at every meeting of the Commission and decisions are to be taken by majority.

In consultation with the Chairperson, preparation of Agenda for meetings and notes shall be the responsibility of the Member-Secretary/Secretary of NCPCR/SCPCR as the case may be and he/she along with such officers as the Chairperson may direct, shall attend the meetings of the Commission and provide secretarial assistance.

Allocation of Responsibilities

Allocation of responsibilities of Members is defined in Section 3(2) (b) under CPCR Act, 2005.

Visits

To gain a first-hand account of prevalent protection measures in place for children, periodic visits to states or districts are to be undertaken by NCPCR/SCPCR as issues pertaining to children's rights are subjects that fall under the State List or the Concurrent List of the Union government.

The visit may include one or more locations in the State and the methodology would comprise meeting with the Chief Secretary, Heads of a Department to review one or more issues of concern for example: implementation of the JJ Act, 2015 or POCSO Act or Intra- or Inter-State migration and displacement faced by children. Such visits would include pre-arranged public meetings with civil society organisations, communities at large and children to gather their inputs on the issues of concern. Field visits to inquire directly with children or families at a children's institution or a construction site housing colony etc.

State/district visits elicit quick responses on certain issues from State authorities while for others visit reports and recommendations would need to follow to seek a more systemic correction from State Government authorities.

Convergence Approach to Child Protection

The National Policy for Children, 2013 (NPC, 2013)¹³ has reaffirmed the need to address the rights and needs of children through programming across different sectors and integrating their impact in a synergistic way. It calls for conscious, convergent and collateral linkages among different sectors and settings, i.e. among Central government Ministries/Departments, between Central and State Governments, between different levels of governance and between the government and civil society with indicators for tracking progress and effective implementation of the NPC, 2013.

Suggestions for Commissions' Intervention

With the NPC, 2013 bestowing on NCPCR and SCPCRs the responsibility to ensure that the principles in the Policy are implemented in all sectors at all levels in formulating laws, policies and programmes affecting children, Commissions may monitor and where required offer their expertise to district administration to bring together various departments for working in a convergent mode to provide 'a strong social safety net in caring and nurturing children'. District Administration must institutionalise the 'convergence approach' and use the support of technology to monitor the same. Commissions must seek monitoring reports from the government at all levels on the proceedings of convergence meetings, review the same and make appropriate recommendations.

Video-Conferences with State/District Authorities

The introduction of relatively low cost, high capacity broadband telecommunication services has enabled video-conferencing to become a strategic enabling tool for real time communication. NCPCR has utilised this facility most satisfactorily to hold review meetings on the implementation of the JJ Act, 2015 and the POCSO Act with Secretaries, Department of WCD/Social Welfare of Bihar, Andaman and Nicobar Islands, Goa, Jharkhand and Assam in the months of July to October 2013 and in also seeking action taken reports (ATRs) on various complaints.

Resorting to video-conferencing to undertake periodical review of implementation of laws and policies and seek immediate response on action taken by district or block level administrative functionaries on complaints of violation of child rights is an approach that SCPCRs should consider seriously. It would improve their

organisational productivity by cutting travel time and costs as ad-hoc and short-notice meetings can be arranged fairly quick. Real time communication with concerned authorities would also solicit immediate action.

Policy Dialogues with Ministries/Departments

Legislations, policies and programmes related to certain themes in the children's sector as with other sectors become dated, irrelevant to current situations and may fail to mitigate the problems and concerns that they are meant to address. Further, budgetary allocations made for necessary interventions may have gone unspent or if utilised may not show any progress in alleviating the problem. To put across these concerns and advocate new thought on thematic issues, it becomes necessary to hold special meetings with Ministries for enabling rights based policy for children. The Commission could also seek special meetings with the concerned Ministries/Departments to discuss thematic considerations on status of children.

Powers of the Commission

To undertake comprehensive inquiries into matters referred to under Section 13(1) (j) of the CPCR Act 2005, Commissions for the Protection of Child Rights have under Section 14 (1) been vested with powers of a Civil Court for the purpose of trying a suit under the Code of Civil Procedure, 1908.¹⁴ The broader purpose of empowering the Commissions with these powers is to enable them to take suo motu notice in cases of gross violation of child rights in order to conduct an enquiry effectively.

Judicial consensus has however emerged on the issue with the Supreme Court holding that the powers made available to the NCPCR/SCPCRs are only for the limited purpose of 'facilitating an investigation or enquiry' but 'do not convert it into a Civil Court'.¹⁵ As such, the power of a Civil Court of granting injunctions, temporary or permanent, is not inherent to the NCPCR/SCPCRs. Such powers can only be exercised by a Court, duly vested with such powers. Therefore, the scope of CPCRs' powers for the conduct of enquiry is limited to the five specifically enumerated powers in Section 14(1) (a) to (e)¹⁶ and, hence, they cannot exercise any other power available to a Civil Court.

Powers under Section 14(1) of the CPCR Act, 2005

Suo motu notice/cognizance by the Commission

Section 13(1) (j) of the Commissions for Protection of Child Rights Act, 2005 (CPCR Act, 2005) empowers NCPCR and SCPCRS to inquire into complaints and take suo motu notice of matters relating to:

- (i) Deprivation and violation of child rights;

- (ii) Non-implementation of laws providing for protection and development of children;
- (iii) Non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children, or take up such issues arising out of such matters with appropriate authorities.

Concise Law Dictionary (third edition), P. Ramanatha Aiyar, defines *suo motu* as, *on one's own motion*. The expression implies a considerable discretion and option.

The Commission may initiate a proceeding on its own motion or information, on the matters mentioned in Section 13(1) (j) of CPC Act, 2005, meaning thereby the Commission is empowered to take cognizance of certain matters even without being approached by any complainant/informant. Delhi Commission for Protection of Child Rights (DCPCR) in a case found an advertisement issued by Delhi Police, stigmatic to children and also much below their dignity and worth. The advertisement was captioned, 'Teach them how to chop onion before anybody teaches them how to chop heads'. Delhi Commission for Protection of Child Rights took strong exception to this advertisement for the reasons mentioned above and took *suo motu* notice/cognizance of the advertisement, processes were issued by the Commission and Delhi Police finally withdrew the Advertisement.

Suo motu notice may be taken on the basis of media reports, on the personal information of the Member/s or the Chairperson, upon the information which has been provided by any individual or organisation, which do not want their identity to be disclosed, by giving such informant the status of 'Whistle Blower'. A Commission has considerable discretion and options with regard to *suo motu* notice/cognizance, but still this is not to be practiced frequently and the *suo motu* notice may be taken only after the authenticity of the complaint is verified by the Commission.

Section 14(1) (a) – Power to Summon and Enforce the Attendance of Any Person and Examine a Person on Oath

Analogous to the powers of a Civil Court, Commissions for the Protection of Child Rights have been empowered to summon and enforce the attendance of any person, if in the opinion of the Commission his presence is necessary for the purpose of enquiry. Every case does not require summons as a first line of action. However, this is a discretionary power and ought to be exercised judiciously in accordance with the principles of natural justice as there are legal consequences envisaged under the Code of Civil Procedure, 1908 that shall ensue in case the summons are ignored.

To this end, it is essential that the Complaints Division of the Commission for the Protection of Child Rights makes a proper assessment of the case and thereafter, submits a proposal for issuing summons through the Registrar to the Chairperson and/or Member Secretary dealing with the case.

Conditions for Issue of Summons

- The Commission for the Protection of Child Rights has the powers to issue summons to persons residing within its jurisdiction. This shall also include representatives of institutions.
- It should be properly and adequately addressed and be served through registered post, prepaid for acknowledgement.
- The time and date at which the person summoned is required to be present should be clearly mentioned. It should also state whether attendance is required for giving evidence or producing document or both. If he/she is required to produce a document, the particulars of the document should also be indicated.
- The person summoned should be given at least 15 days from the date of the notice. In matters of urgent or grave nature, a lesser period may suffice.
- In the event of non-receipt or if the person cannot be found, a copy of the summons should be affixed on the outer door or some other conspicuous part of the house or office in which the person lives or works.

The processes for conducting summons, hearings at NCPCR have been detailed in the Standard Operating Procedure (SOP) for Processing Complaints, Inquiry and Investigation (**Annexure-VI**).

Examination on Oath

It is mandatory for a person summoned to be examined on oath. As such, an oath must be administered to them before they proceed with their statement. Section 178 of the Indian Penal Code makes refusal to take oath an offence. In such cases, the Commission for the Protection of Child Rights can forward the matter to the Magistrate as per section 14(2) of the CPC Act, 2005.

Section 14(1) (b) (d) – Power to Order Discovery or Production of Any Document and to Requisition of Any Public Record or Copy Thereof from Any Court or Office¹⁷

Under Section 14(1) (b) of the CPC Act, 2005 if the Commission is of the opinion that a party concerned is in possession of any document related to a case before it, then it can order for the production of such documents. It can also make requisition for a public record from any government officer or court under Section 14(1) (d).

However, it should first issue letters requesting for requisite information from the party or authority concerned and only in the event of any failure on their part respond to the same, should the Commission resort to the powers enumerated under Section 14(1)(b) and (d). The party should be given at least 15 days' notice to present the documents before the Commission.

Section 14(1) (c) – Power to Receive Evidence on Affidavits

If the Commission considers it expeditious, it may require a person to provide evidence on affidavit about a violation, thereby dispensing it with his/her physical presence. Affidavits submitted should be confined to facts within the knowledge of the deponent. The parties ordinarily have a right to cross-examine witnesses appearing in hearings before the Commission.

Section 14(1) (e) – Power to Issue Commissions for the Examination of Witnesses or Documents

According to Code of Civil Procedure - Schedule 1, Order XXVI, the Commission with these powers, may issue a Commission comprising one or more Commissioners in cases whereby, it considers a local inquiry necessary, in the interest of justice for a more comprehensive view of the case or for the expeditious disposal of the case or for any other reasons, as it may deem fit.

Powers of a Commission

The Code of Civil Procedure confers the following powers on a Commission, unless stated otherwise in the order of appointment:

- Examine the parties themselves and any witness whom they or any of them may produce and any other person whom the Commissioner/s thinks proper to call upon to give evidence in the matter referred to him.
- Call for and examine documents and other things relevant to the subject of inquiry.
- At any reasonable time enter upon or into any land or building mentioned in the order.

Examination of government servants who are unable to attend the same 'without detriment to public service' and also to those residing beyond the limits of its jurisdiction.

The report and the evidence so collected shall be considered as evidence in the case and form a part of the record. If the Commission for the Protection of Child Rights is dissatisfied with the proceedings of the Commissioner/s, it may direct further inquiry into the matter.

Based on the nature of inquiry, the Commission for the Protection of Child Rights may extend all or some of the above powers to the Commissioner/s as may be necessary for them to discharge their functions.

Requirements for Appointment of a Commission of inquiry comprising one or more Commissioners¹⁸

- Commissioner/s selected should be persons of eminence in public life with domain expertise in their area of specialisation and could include lawyers, social activists, etc. Those appointed should not be related, in any manner whatsoever, to the complainant or the opposite party.
- A complete transparency in the appointment is necessary and all records pertaining to the same should be maintained in the official records.
- The terms of reference provided to the Commissioner/s should include relevant parts of the complaint and instructions should specify whether the Commissioner/s are expected to transmit the inquiry held by them or also, provide an opinion on the matter. The time frame to submit its report along with the evidence taken, should be indicated, normally within 30 days' time subject to urgency of the matter. The report should be duly signed by all the Commissioners appointed.
- Commissioner/s is entitled to fees and travelling allowances for examining witnesses.

Powers under Section 14(1) can be exercised simultaneously

The powers under Section 14(1) of the CPCR Act, 2005 can be exercised simultaneously by making reference to other powers invoked by the Commission for the Protection of Child Rights in the same notice.

Given that the Commission is bound by the principles of natural justice in the exercise of its powers, the decision to invoke the powers of a Civil Court may be taken collectively by four Members including Chairperson and only after all other means have been exhausted. This is however, subject to urgency of the matter.

Section 14(2) – Power to Forward a Case to a Magistrate

The CPCR Act has vide Section 14(2) empowered Commissions to forward any case to the Magistrate under Section 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

The Commission may forward a case to a Magistrate if a person fails to produce documents, refuses to take an oath or answer questions.

Limitation on Powers

Absence of powers to review decisions

The Courts in India usually have the powers to review their own decisions, i.e. reconsider a decision rendered earlier, in the light of, surfacing of new evidences, discrepancy in earlier proceedings, etc. However, such a power is not available to NCPCR/SCPCRs under the CPCr Act, 2005. As such, once an inquiry is conducted on receipt of a complaint and the matter is accordingly disposed of, the same cannot be reviewed by the Commission for the Protection of Child Rights.

Lack of powers available to a Criminal Court

The Commissions for the Protection of Child Rights have not been vested with powers of a criminal court, as such, and they can exercise only certain specified powers of a civil court. In the event they exercise powers of a criminal court, their action can be successfully challenged before a court of law on the grounds of being exercised with a mala fide intent, lack of jurisdiction and non-application of mind.

Completion of Inquiry – Further Steps

Section 15 of the CPCr Act, 2005 elaborates the steps the Commissions can take after completing inquiry under Section 14 pertaining to violation of Child Rights under Section 13(1)(j) of the CPCr Act, 2005 and not during the pendency of the same.

Post-conclusion of inquiry, the Commissions for the Protection of Child Rights, under Section 15 of the CPCr Act, 2005 have been empowered to undertake three steps, i.e. recommend action to the concerned Government or authority for the initiation of proceedings; approach the Supreme Court or High Court for appropriate relief; and recommend to the concerned Government or authority for the grant of interim relief. These steps are not mutually exclusive and hence, the Commissions may invoke any or all of them, as circumstances may indicate.

This issue has been adjudicated upon by the Delhi High Court in the case of, NDTV Imagine v. Union of India, whereby, the NCPCR had issued a notice to the Executive Director of NDTV Imagine to stop the telecast of 'Pati Patni Aur Woh' – a reality show wherein, babies and children were to be taken care of temporarily by couples who were not their parents. In response, NDTV Imagine moved the High Court challenging the notice. Although, the Court ordered a stay, it clarified that NCPCR could continue their inquiry and file a petition under Section 15, if necessary. The Court held that the powers under Section 14 can be exercised only after giving notice to the parties and further that the NCPCR 'cannot on its own pass any direction

without first completing the inquiry'. Commissions for the Protection of Child Rights should take the following safeguards before initiating any steps under Section 15:

- Ensure that the concerned Government or authority has submitted its report on the matter.
- The procedure for issue of summons, examination of persons, evidence on affidavits and action for non-compliance has been duly complied with in accordance with Section 14 of the CPC Act, 2005 and the Code of Civil Procedure, 1908.
- The parties to the dispute have been given an opportunity of being heard, in person or in writing.
- The inquiry has established that there has been a gross violation of child rights or contravention of provisions of a law.

Section 15(1) (i) Issuing Recommendations

Where an inquiry discloses, the commission of violation of child rights of a serious nature or contravention of provisions of any law for the time being in force, the Commissions may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as it may deem fit against the concerned person or persons.

The ambit of the power vested in the Commissions under this provision is of the widest amplitude. This is to enable it to formulate appropriate recommendations based on the facts and circumstances of each case. A harmonious reading of Section 13(1) (j) and Section 15(1) would reveal that Commissions can proceed to inquire into cases of serious violation of child rights even if they do not violate any law. This discretion vested in the Commission under Section 15(1) should be exercised judiciously and in accordance with the principles of natural justice. As such, it should satisfy itself that the allegations constitute a prima facie violation of child rights as enumerated in the Constitution of India, the UNCRC and other domestic laws; and only then entertain a complaint. In the event, the Commission has registered a complaint on a mistaken belief that it involves violation of child rights but thereafter, learns otherwise; it should communicate the same to the complainant and close the case.

Nature of Recommendations

Under Section 15(1) (i) of the CPC Act, 2005 the Commission has been empowered to issue recommendations to the Government or other authorities and should be within the broad framework of their recommendatory powers as circumstances may necessitate, giving due consideration to the views of the victim.

They cannot import their status to that of a Court of law and surpass their jurisdiction by issuing recommendations in the nature of injunctions or other similar orders. The Commissions cannot entertain matters pertaining to custody, property dispute and determination of guilt of an accused, service matters and matters of like nature. As such, unlike the courts of law, their decisions are of a non-binding nature.

This issue was examined by the Madras High Court in the case of *Rajesh Das v. Tamil Nadu State Human Rights Commission*, wherein, it was held that, ‘the power, in simple terms, is to make appropriate recommendations to the Government. The said recommendation cannot be equated to an executable order at all. The Commission is neither a judicial authority nor a quasi-judicial authority to adjudicate upon the disputed facts.’ Therefore, being a recommendatory body, it cannot issue injunctions or levy penalties. However, the importance of these recommendations cannot be underestimated; given that the Government is obligated to respond with due consideration.

In a case involving corporal abuse being inflicted on a child belonging to Scheduled Caste community by a school teacher, the Commissions can recommend immediate steps for the rehabilitation of the child including medical treatment and filing of criminal complaint against the teacher. This would be a specific recommendation. A broader recommendation would be for the Department of Education to pass a circular, or if already issued, a reminder while also circulating NCPDR Guidelines on Corporal Punishment banning corporal punishment and the steps government would take if the same is resorted to in future. It could also recommend wide scale awareness campaigns in visual and print media to stop this heinous practice.

Persons to whom recommendations may be addressed

Section 15(1) (i) identifies ‘the concerned Government and authority’ as the bodies to which recommendations can be made. The concerned Government would mean the Central or the State Government, based on the nature of intervention sought.

Recommendations in the Form of Interim and Final Orders

Recommendations being passed by a Commission for the Protection of Child Rights may be in the form of an order. The form and content of an order depend on the type of proceeding, the phase of the proceedings in which they are issued. They could be an Interim Order or a Final Order. All orders may be written and signed by a Member who handled the complaint and preferably also the Chairperson to endorse the same. Some orders are spoken orally by the Member in open court/hearing and are to be reduced to writing and signed as above.

The form and content of final orders could be as follows:

- It should contain facts of the case, conclusions of law and a recommendatory order.
- Reference can be made to previous orders passed if any.
- Final orders may modify or revise the initial order in whole or in part.
- Final orders are to be served upon the authorities and their representatives stipulating the date within which the recommendations made are to be complied with and the ATR is to be submitted. Generally not more than a thirty day period is given from the date the recommendations were received by the authorities for the submission of the ATR.
- Final orders may contain directions that specify portions of the authority's or violator's record that shall not be disclosed as public records to protect the privacy interests of child whose rights have been violated.

Follow-up of Order

The responsibility for following up on the compliance of recommendations, i.e. seeking the ATR made in the Interim and Final Orders of the Commission lies with the Secretary of the Commission. Failure to receive an ATR from the concerned authority or party against whom strictures have been passed would necessitate sending a first reminder followed by a second reminder or even a third reminder, each of which may be sent after the lapse of a fortnight of seeking the previous ATR. Rejection or non-acceptance of any recommendations by the Government or Authority has to be substantiated with reasons. Where felt necessary, the Commission may issue summons to the concerned Government or Authority to compel it to respond to its orders.

Commissions for the Protection of Child Rights are also mandated to place all compliances received or rejected before the Parliament or State Legislature in its Annual Report or Special Reports,¹⁹ as the case may be.

Section 15(1) (ii) - Approaching the Higher Judiciary for Direction and Orders or Writs

The Commissions for the Protection of Child Rights have been authorised by the CPCR Act, 2005 the power to approach the higher judiciary to obtain relief in matters of grave importance.

Factors to be considered before approaching courts

- Extent and gravity of the violation of child rights. Whether rights of a large or significant group of children are affected and the geographical area where the children are affected of two or more State(s)/UT(s) or at a national level.
- Nature of the violation – whether it is due to inaction of the Government or Authority or a private entity to address the violation or any action of the Government or Authority or private entity that has resulted in the violation.
- Whether the violation of rights has been clearly made out on the basis of the materials available with the Commission.
- If the violators are the Government or other authorities can they be connected to the violation in any way, even if the violation is apparently committed by a private entity.
- Whether children’s rights under the Constitution, UNCRC, any domestic legislation, or Supreme Court or High Court directions or any other International Conventions have been violated.
- Whether there has been inadequacy or delay on the part of the Government or the concerned Authority in taking action against the recommendations of the Commission for the Protection of Child Rights.
- Whether speedy relief is plausible from the Courts.
- Based on the nature of the violation, a decision needs to be taken whether to address the High Court or Supreme Court.
- Access to pro bono services or availability of funds for litigation including fees of Advocates/Senior Advocates to argue the matter is a criterion to be considered.

The decision to approach the Court should be taken by the Full Commission after due consideration of all the above factors and the strategies adopted for addressing the violation.

Intervening in Ongoing Matters

Although, not expressly authorised to intervene in an ongoing case under the CPCRA Act, 2005, Commissions for the Protection of Child Rights can implead to make one, and should consider doing so only in cases substantially affecting the rights of children and only after careful consideration of the factors listed above.

However, in some cases the court may of its own volition involve the Commission in a matter.

Section 15(1) (iii) Interim Relief

Victims of violent crime, especially victims of child sexual abuse, require to be provided with medical, psycho-social and material support in order to move on to the road for recovery. The criminal justice system recognises this responsibility for provision of timely and cost-free medical aid, counselling, legal support and financial aid especially to the most vulnerable group and there are provisions in several laws to provide victim compensation such as the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 and the (Prevention of Atrocities) Amendment Act 2015, the POCSO Act, 2012 and the Code of Criminal Procedure provides for courts to pass order under Section 357 to pay compensation and 357A for States to formulate a Scheme for victim compensation. However, none of the laws make available financial support to a family soon after registration of complaint. Access to victim compensation is possible only on the basis of a Court order through the State Legal Services Authority.

As a measure of offering temporary assistance during the pendency of the proceedings, Section 15(1) (iii) of the CPCRA Act allows for the Commissions to recommend release of Interim relief to child victims irrespective of liability being established in a court of law. It is usually in the nature of monetary compensation payable to the child victim or the family of the child victim on the recommendation of the Commission.

Section 15(1) (iii) of the CPCRA Act empowers Commissions to recommend to the concerned Government or Authority for the grant of interim relief to the victim or the members of his family.

Commissions for the Protection of Child Rights should make a recommendation for interim relief after considering the following factors:

- Extent and gravity of the violation of child rights. If the violation has resulted in bodily injury or death of the child, medical expenses incurred by the victim or the victim's family needs to be reimbursed.
- If the government or authority is directly or vicariously responsible for the violation, full compensation for the injury or loss caused.
- Effectiveness of monetary relief to redress the harm caused by the violation.
- If compensation has already been paid to the victim or victim's family by the government or authority, verify the adequacy of the compensation to redress the violation.

Facilitating Release of Interim Compensation

- Commissions should be prompt in recommending grant of interim relief to the victim or the members of his/her family to the concerned Government or authority.
- It should engage with the District, State and National Legal Services Authorities to expedite the release of victim compensation.
- NCPCR and SCPCRs can collate and analyse data related to victim compensation in every state/district as the case maybe, and monitor whether they are being released in a timely manner, are adequate to need, the eligibility criteria, limitation period, procedure for claiming compensation and quantum available under the victim compensation scheme.
- On the basis of their analysis Commissions can make recommendations to the Government to increase and improve the provisions related to victim compensation, as well as bring in new provisions related to interim relief and to simplify the procedure for releasing the funds.
- Commissions for the Protection of Child Rights could formulate comprehensive guidelines for recommending interim relief to victims.
- If the Government or authority is evasive on a recommendation of a Commission to provide compensation, especially in urgent matters, the Commission can approach the High Court for appropriate relief.

The CPCPCR Act and Rules are however silent on the question of allocation of budget/ fund from which compensation would be paid, or procedure to obtain it.

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FUNCTIONS OF THE COMMISSION

FUNCTIONS OF THE COMMISSION

Introduction

The Commissions for Protection of Child Rights Act, 2005 outlines the functions of the Commission in Section 13. These functions have been further elaborated under Rule 17 of National Commission for Protection of Child Rights (NCPCR) Rules, 2006 and can be divided into four broad categories:

- Promotion: Sections 13(1) a, g and h
- Protection: Sections 13(1) c, d, e and j
- Monitoring: Sections 13(1) b, f and i
- Additional Functions: Section 13(1) k

Table 3.1: Functions of the Commission

Section	Category of Function	Relevant Extract from the Act
13(1)(a) read with Rule 17(a)	Promotion	examine and review the safeguards provided by or under any law for the time being in force for the protection of child rights and recommend measures for their effective implementation
13(1)(b)	Monitoring	present to the Central Government, annually and at such other intervals, as the Commission may deem fit, reports upon the working of those safeguards
13(1)(c) read with Rule 17(a) and (c)	Protection	inquire into violation of child rights and recommend initiation of proceedings in such cases
13(1)(d)	Protection	examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disaster, domestic violence, HIV/AIDS, trafficking: maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures

Section	Category of Function	Relevant Extract from the Act
13(1) (e)	Protection	look into the matters relating to children in need of special care and protection including children in distress, marginalised and disadvantaged children, children in conflict with law, juveniles, children without family and children of prisoners and recommend appropriate remedial measures
13(1)(f)	Monitoring	study treaties and other international instruments and under take periodical review of existing policies, programmes and other activities on child rights and make recommendations for their effective implementation in the best interest of children
13(1)(g) read with Rule 22	Promotion	undertake and promote research in the field of child rights
13(1)(h)	Promotion	spread child rights literacy among various sections of the society and promote awareness of the safeguards available for protection of these rights through publications, the media, seminars and other available means
13(1)(i)	Monitoring	inspect or cause to be inspected any juvenile custodial home, or any other place of residence or institution meant for children, under the control of the Central Government or any State Government or any other authority, including any institution run by a social organisation; where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary

Section	Category of Function	Relevant Extract from the Act
13(1)(j)	Protection	<p>inquire into complaints and take suo motu notice of matters relating to:</p> <ul style="list-style-type: none"> • deprivation and violation of child rights; • non-implementation of laws providing for protection and development of children; • non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children, or take up the issues arising out of such matters with appropriate authorities
13(1)(k)	Additional	such other functions as it may consider necessary for the promotion of child rights and any other matter incidental to the above functions

Promotion Function

The promotion functions of specific sub-sections are further elaborated below:

Section 13.1(a)

Examine and review the safeguards provided by or under any law for the time being in force for protection of child rights and recommend measures for their effective implementation.

NCPCR Rule 17(a)

Analyse existing law, policy and practice and assess compliance with United Nations Convention on the Rights of the Child, undertake inquiries and produce reports on any aspects of a policy or practice affecting children and comment on proposed new legislation from child rights perspective.

This function mandates Commissions to review legal frameworks, make recommendations on laws being implemented and offer suggestions on content of laws being formulated to ensure that a rights-based perspective is adhered to in all matters concerning children. To undertake this responsibility, it is important that Chairpersons and Members of the Commissions for the Protection of Child Rights familiarise themselves with constitutional provisions, laws and policies related to children and keep abreast of all judicial directions passed in favour of children.

Section 13.1

Section 13.1 (g)

Undertake and promote research in the field of child rights.

NCPCR Rule 22

The Commission may constitute a panel of consultants for assisting the Commission in a wide range of tasks such as investigation on inquiry, to serve on task forces or committees for research and analysis.

Scope of Research

- To gain a holistic understanding of the issues that affect the rights of children and pinpoint the problems that need to be addressed to ensure better protection of child rights.
- To create new knowledge base for evidence-based advocacy, training and capacity building of various stakeholders as also for public education.
- To review implementation of laws, evaluate government policies, programmes, budget, and service delivery of entitlement which affect the child rights related to survival, protection, development and participation.
- To recommend formulation of new law, policy or a new scheme to protect and promote rights of children.
- To support course correction in service delivery of government schemes.
- To use as a strategic litigation tool for change by filing inputs in ongoing or fresh petition in Court.
- To use as an advocacy tool in the public domain to influence change in promoting or protecting children's rights.

Research Advisory Team

Such a team could be constituted, as has been done by the NCPCR, comprising subject related experts and government officials from nodal departments to guide/review the study while it is in progress as also to review the final draft.

Research Support

Research could be undertaken directly, through whole time consultants employed by the Commission under the overall guidance of the Chairperson and/or Member/s. It could also be outsourced to expert bodies in the field such as research organisations

or an NGO with expertise on the subject and under the overall supervision of the Chairperson and/or Member/s. Universities or allied government bodies could be motivated to undertake studies on themes provided by the Commissions for the Protection of Child Rights.

Monitoring Utilisation of ‘Research’ Components of Government Schemes

Recommendations could go to governments to undertake research and evaluation of various schemes being implemented by utilising budgetary allocations attached to the schemes. The Commissions could do well to monitor and provide support where necessary for the utilisation of this budget as it would contribute to better performance of the scheme in the long run.

Section 13.1 (h)

Section 13.1 (h)

Spread child rights literacy among various sections of society and promote awareness of the safeguards available for protection of these rights through publications, media, seminars and other available means.

Child Rights Awareness

One way of promoting and protecting children’s rights is by creating awareness and imparting knowledge about these rights and persuading citizens to accept their obligations to uphold them. Sharing details of abuse inflicted on children and ensuring speedy justice to child victims also promotes a protective environment for children. As always, while sharing any information regarding child abuse, care may be taken to avoid providing information on the child’s identity.

Building awareness among children about their rights and empowering them to claim these rights is another specific approach of spreading child rights literacy.

Most of our flagship programmes such as the Integrated Child Development Services (ICDS), Integrated Child Protection Scheme (ICPS), Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) have an in-built budget component for Information, Education and Communication (IEC) with State specific strategies and linkages for strengthening capacities of those who implement the scheme and for targeted groups. However, monitoring the outcomes of these IEC initiatives is rarely undertaken.

Suggestions for Commissions' Intervention

- Commissions for the Protection of Child Rights by their very mandate are expected to play a twin role in advocating for child rights and monitoring its dissemination by various stakeholders. In most of the States, the Commissions take their advocacy role seriously and address children in schools or in the community through focus group discussions, distribution of audio and visual advocacy material over the radio, cinema, and television on specific issues such as disabilities, survivors of crimes, child witnesses and school dropouts.

Protection Function

The protection functions of the various sub-sections are discussed below:

Section 13.1(c) and 1(j)

Section 13.1(c)

Inquire into violation of child rights and recommend initiation of proceedings in such cases.

Section 13.1 (j)

Inquire into complaints and take suo motu notice of matters relating to:

- Deprivation and violation of child rights
- Non-implementation of laws providing for protection and development of children
- Non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children or take up the issues arising out of such matters with the appropriate authorities

NCPCR Rule 17 (a), (c)

- (a) Undertake inquiries and produce reports on any aspect of policy or practice affecting children.
- (b) Undertake formal investigations where concern has been expressed either by children themselves or by concerned person on their behalf.

Complaint Management

Any child in distress or his/her parents or any well-wisher can approach the Grievance Redressal Mechanism of NCPCR by way of phone call/personal appearance/e-mail/letter/e-baalnidan/POCSO e-Box/grievances portal etc. and present the details of the grievances for seeking remedies. The NCPCR also takes suo motu cognizance

of a news item/an incident coming into notice/a story in a visual media involving any child in distress as a complaint (Section 13(1) (j) of the Commissions for Protection of Child Rights (CPCR) Act).

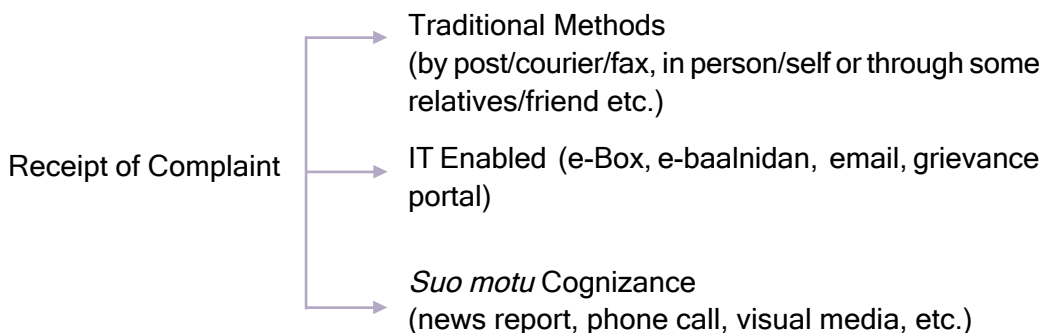
This is a quasi-judicial process, which serves as an alternate dispute resolution system to safeguard children's rights. There are several advantages to this process:

- It provides direct contact with children whose rights have been violated and can benefit the child victims who are forced to live in 'closed settings' such as hostels, children's homes, orphanages, ashram schools and shelter homes. Commissions for the Protection of Child Rights can take suo motu cognizance or register oral or written complaints from children in these cases and act expeditiously to safeguard their interests.
- It is free of charge and readily accessible to those who have limited or no financial resources.
- The approach is flexible, child friendly and less formal than the judicial system. It does not require the complaints to have legal representation.
- It is an effective mechanism through which Commissions can hold government bodies accountable.
- It provides additional opportunities to identify systemic issues which derail governance.
- It serves as an advocacy and reform effort in addition to other functions of the Commissions such as research and police analysis.

Complete Procedure for Dealing with Complaints/Suo Motu Action

1. General

(i) Process of receipt of complaints in NCPCR is as follows.



Complaints in English, Hindi or any other language included in the Eighth Schedule to the Constitution are entertained.

- (ii) No fees will be charged by the Commission on such complaints.
- (iii) Complaint may be in the form of petition/communication addressed to the Chairperson, Members, Member Secretary or any other Officer of the Commission received from a victim or any other person/organisation on behalf of the victim, in person, by post, by fax, by email, through Commission's website online complaint form (e-baalnidan and e-Box), or by any other means whatsoever including any form of electronic media, alleging violation or abetment thereof or negligence in prevention of such violation by a public servant, or deprivation of all or any of the child rights as defined in Section 2(b) of the Act.
- (iv) In case the complete picture of the complaint is not ascertainable from the communication received, the Commission may seek further information from the complainant.

2. Receipt and Registration of Complaints

- (i) All complaints received by the Commission shall be diarised in the computer on the day of receipt. Each communication received shall be allotted a Diary Number. Thereafter the complaint shall be submitted to Designated Coordinator of Complaint Management System (CMS) who shall ascertain its admissibility.
- (ii) The Designated Coordinator of CMS shall ensure that all communications received are complaints falling under the purview of the Commission.
- (iii) The Designated Coordinator/in-charge of the complaints section will ensure that all complaints received are noted/recorded in the Computer and a unique ID No/Complaint No is accorded to the complaint.
- (iv) The Designated Coordinator in-charge of the complaints section shall ensure that the complaints received in languages other than Hindi/English and included in the Eighth Schedule of the Constitution are expeditiously translated into Hindi/English for placing before the Commission.
- (v) The Designated Coordinator/in-charge of the complaints section will examine if the complaint prima facie is considered as not entertainable and may be returned to the sender. Complaints shall be considered as not entertainable on the following grounds:
 - (a) Illegible
 - (b) Anonymous, pseudonymous or vague
 - (c) Trivial, frivolous or does not make out any specific child right violations
 - (d) Matter being sub-judice, pending before a Tribunal or any other Commission

- (e) Matter is covered by a judicial verdict/decision of the Commission.
 - (f) Allegation is not against any public servant/Individual/Authority.
 - (g) Issues relating to service matters not involving the child rights.
 - (h) Matters relating to civil disputes, such as property rights, contractual obligations, labour/industrial dispute, conjugal matters involving custody of child, etc.
 - (i) Matter being outside the purview of the Commission.
 - (j) Any other ground/reason the Commission considers justifiable not to entertain the complaint.
- (vi) For the complaints found not entertainable, the same shall be returned to the complainant indicating the grounds of inadmissibility after obtaining the orders from the Members/Commission. A copy of the complaint and the communication shall be consigned to the records of the Commission.
 - (vii) For the complaints to be entertained, the Designated Coordinator shall pass on the complaint to the concerned dealing hand in-charge with instructions to open a new file and allot a file number and make necessary entries in the Computer/Register.
 - (viii) The concerned dealing hand in-charge shall also send a receipt/endorsement to the complainant indicating the complaint/file number while asking for report from authority this will be deemed as acknowledgement of complaint.
 - (ix) The concerned dealing hand in-charge shall simultaneously ascertain as to whether there is any possibility of involvement of any other Commission in investigations, if so, seek details of action taken along with a copy of the communication from such Commission.

3. Scrutiny of Complaints

- (i) The concerned official dealing with the complaint shall scrutinise and identify the following very clearly:
 - (a) Name & address of the complainant.
 - (b) Name, age (if given), sex.
 - (c) Address of the victim.
 - (d) Person/authority/agency against whom the complaint is made.
 - (e) Nature/gravity of the complaint.
 - (f) Relevant facts and the gist of the complaint.
 - (g) Relevant laws/rules/positions involved including the relevant portions of the NCPCR rules/guidelines.
 - (h) List and nature of documents relied upon/referred to in the complaint.

- (ii) List down the details of additional information/documents/affidavits/statements of witness required in the process of redressal.
- (iii) Considering the fact that the Commission is dealing with the protection of child rights, all the complaints received are taken with the premise of being on urgent basis. However, all new complaints shall be carefully examined and the complaints marked as 'urgent' shall be placed before the Commission within 24 hours of the scrutiny.
- (iv) All other complaints shall be carefully examined and placed before the Commission.

4. Processing of the complaint

- (i) After the receipt of complaint, the concerned official dealing with it shall make out a gist of the complaint and listing the Authorities/Agencies/Persons who are concerned in the case.
- (ii) The Concerned dealing hand shall ensure that the matter is also not in consideration with a State Commission or any other similar authority. In case the State Commission or any authority is also examining the complaint, will forward the matter to them for necessary action under intimation to complainant.
- (iii) In all other cases where the complaint lies on NCPDR, a letter to the concerned Authorities/Agency/Department/Person may include seeking information/action taken not just on the complaint in specific but also on the issues involved and linked to the complaint of deprivation/child rights violations.
- (iv) The letter addressed to the concerned Authorities/Agencies/Departments/Persons should give specific time for submission of responses. The specific time would depend upon the nature and gravity of the complaint varying from case to case.
- (v) The complainant needs to be informed about the complaint having been acknowledged and necessary action having been taken by the Commission. Such acknowledgement needs to incorporate the complaint number/Case diary no. etc. and the date of acknowledgement very clearly.
- (vi) The gist of the action initiated and letters sent by the Commission to the concerned Authority(ies)/Department(s)/Agency(ies)/Person(s) giving a stipulated time for action, shall be updated in the CMS.
- (vii) On updating the status in the CMS, 'The Reminder Date' depending upon the time given in (iv) above, needs to be checked and flashed for due memory at a later date.
- (viii) On expiry of the stipulated time for action by the concerned Authority(ies)/Department(s)/Agency(ies)/Person(s) and in case of non-receipt of

response, the Concerned dealing hand shall put up a 'Reminder' (Reminder-I), stipulating a specific timeline depending on the nature and seriousness of issue in complaint, to give the concerned Authority(ies) / Department(s)/ Agency(ies)/Person(s) a fair chance in equity and natural justice to respond.

- (ix) At the expiry of the stipulated specific time to respond and in case of non-receipt of any response, a second 'Reminder' (Reminder-II) seeking response from the concerned Authority(ies)/Department(s)/Agency(ies)/ Person(s) will be issued.
- (x) In absence of any response to the communication of the Commissions issued to the concerned Authority(ies)/Department(s)/Agency(ies)/ Person(s), the Commission may if it deems fit, issue a Demi-Official (D.O.) letter seeking personal attention of the Person concerned on the issue of the complaint. Such D.O. shall be direct, personal and friendly.
- (xi) In the extreme circumstance of non-response by the concerned Authority(ies)/Department(s)/Agency(ies)/Person(s) to any of procedures in (vi), (viii), (ix) and (x) above, the Commission may initiate the process of summoning the concerned person for personal hearing.
- (xii) In the complaints of child right violations and deprivations requiring urgent attention of the Commission, the steps contemplated in clause (viii), (ix) and (x)
- (xiii) Whenever the Commission receives complaints on issues of child trafficking/child labour involving children belonging to more than one State, it shall be classified as an inter-state complaint.
- (xiv) The Commission's intervention on issues of child trafficking/child labour/ children in need of care and protection involving children from more than one state will include:
 - (a) Seeking details on the child/children rescued – viz. name, sex, age, religion, caste, father's name and address of residence.
 - (b) Seek Social Investigation Report (SIR) which may include the circumstances leading to the trafficking of the child.
 - (c) Details and decisions of Child Welfare Committee (CWC) on rescue, restoration, repatriation and rehabilitation of the rescued children.
 - (d) Seek a copy of FIR filed which invariably should include relevant sections (Sections 75, 76, 77, 78, 79, 80, 81, 82, 83, 84 and 85) of Juvenile Justice (Care and Protection) Act, 2015 together with the relevant sections of other child related laws and sections of IPC.

- (e) The Designated Coordinator and in his absence the in-charge of the Complaints Section under Direction of Member/Chairperson shall facilitate repatriation of rescued children by coordinating efforts with the respective State Officials including the Social Welfare Department/CWC/NGOs working in the areas of child trafficking/missing children so that the parents of the children rescued are contacted at the earliest.
- (xv) The requisite compliance report shall be called from all concerned and documented properly.

5. Enquiry/Investigation in pursuance of Section 14 of CPC Act, 2005 and under Rule 17 of NCP Rules, 2006 in respect of matters of Suo Motu cognizance and Complaints

Under Section 14 of the CPC Act, the Commission has all the powers of a Civil Court in respect of the following matters.

- (a) Summoning and enforcing the attendance of any person and examining him on oath;
- (b) Discovery and production of any document;
- (c) Receiving evidence on affidavits;
- (d) Requisitioning any public record or copy thereof from any court or office; and
- (e) Issuing commissions for the examination of witnesses or documents.

(In routine cases, the enquiries into the complaints can be made by writing letters to the concerned authority, followed up by phone calls. However, in serious cases a severe child rights violation, the Commission sends a fact finding team with due approval of the Chairperson to the place in question for enquiring the matter then and there and approaching the concerned authorities for immediate action leading to relief to the child in distress).

Suo motu cognizance

- (i) The Chairperson/Member/Member Secretary/Registrar may also take suo motu cognizance i.e. cognizance on its own motion, of issues/incidents relating to child rights violation/deprivation reflected in any television broadcast, newspaper, magazine, posters, radio broadcast or any other audio/video media etc.
- (ii) The Commission being a quasi-judicial body may conduct inquiry/direct investigation and start the process of law on its own motion under the Code of Civil Procedure, 1908 (5 of 1908) in pursuance of powers vested in the Commission u/s 14 of CPC Act, 2005.

- (iii) The Commission, if feels necessary, constitute a team comprising its members, officials, experts in the field of child rights for conducting direct investigation and submit a report to the Commission. Such team shall be constituted by the Chairperson.
- (iv) No member of the investigation/inquiry team shall divulge any information to anyone outside the team/Commission unless the report of the team is approved and adopted by the Commission.
- (v) On adoption of the Report of Inquiry by the Commission, a gist of the Report and the Recommendations on the remedial measures suggested may be sent to the concerned authorities.
- (vi) Concerned dealing hand/in-charge of the case under the supervision of the AD shall follow up the case with the concerned authorities until the logical conclusion of the complaint is satisfactorily arrived.

6. Quasi-Judicial functions of the Commission

- A. Summon protocol for facilitating inquiry/investigation.
 - (i) The summons/enforcement of attendance of a concerned officer/a connected person by the Commission shall be only for the purpose of inquiry or suo motu notice of matters taken by the Commission u/s 13(1) (j) of the CPCR Act. The purpose of summoning will be for extracting relevant information/evidence and/or giving him an opportunity to be heard in the matter.
 - (ii) A full case has to be made out on file to the Member concerned along with a self-contained note by the concerned dealing hand of the Complaint Section. The Member concerned, after being satisfied with the justification for the summoning of an officer/person, will send the file to the Chairperson for approval.
 - (iii) The summoning of an officer/a concerned person in complaints/suo-motu matter (which is under inquiry) will be taken by the Chairperson. The Chairperson may consult two other members, one of whom shall be the Member initiating the proposal for summon.
 - (iv) 'The Bench for Summons Hearing will comprise the Chairperson and at least two Members (including the dealing Member). In emergency situation, the Bench will comprise Chairperson and at least one Member. In the absence of Chairperson, the Bench will be chaired by the dealing Member. The decision of the Bench will be taken by majority. In case of a tie, the Chairperson or the Member chairing the Bench will have a casting vote'.
 - (v) The decision of the Bench will be taken by majority.

- (vi) The Summons will be issued by the Registrar with the approval of Chairperson on file which will be referred to him along with a self-contained note with full justification for such summons by the dealing Member. The file will include a draft summon, as finalised by the concerned Member with the assistance of the concerned dealing hand of the Complaint Section and/or with the support of a lawyer engaged for the purpose of legal assistance in a particular summoning process (to perform the tasks at pre-summoning stage, during the Summons Hearing and for preparation of the draft proceedings of post hearing).
- (vii) The lawyers/experts shall not form part of the Bench for the summon hearing. Their presence will be utilised for the purpose of rendering support to the Bench to attend to any specific queries. Such role clarity must be conveyed to the concerned lawyer engaged for the purpose of specific summons hearing. The lawyer will also prepare the proceeding of the summons hearing. For the above purpose as well as assisting the Commission in other legal matters, a Panel of Lawyers has to be drawn up, based upon the names referred by Chairperson, Members, Member Secretary and Registrar. The Panel could be finalised/approved by Chairperson on the recommendation of an Internal Committee Constituted by her for the purpose.
- (viii) The officers, complainants and witnesses summoned for the hearing are seated in separate rooms’.
- (ix) The summons hearing of the concerned officers(s) and/or person(s) by the bench will either be video recorded and their statements be taken on oath. However, the written statements from such officer(s)/person(s) may be taken only when they are not examined on oath by the Bench and the same is not video recorded.
- (x) The proceedings and the recommendations emerging from the Summon Hearing to be finalised by the dealing Member with the support of his/her concerned dealing hand and/or Lawyer/Expert assisting in the matter and will be moved on file through Registrar/Member Secretary to the Chairperson for approval.
- (xi) The recommendations (post-hearing) to be issued under Section 15 of the CPC Act, 2005) by the Member Secretary/Registrar, as decided in accordance with Para (v) above.
- (xii) The follow-up of the recommendations with the concerned State Government/authorities primarily done by the concerned Member. The Member will be supported by the Member Secretary in the follow-up process in case required to do so.

The Summons Hearing of the concerned officer(s) and/or person(s) by the Bench will either be video recorded and their statements be taken on oath. However, the written statements from such officer(s)/person(s) may be taken only when they are not examined on oath by the Bench and the same is not video recorded.

The proceeding and the recommendations emerging from the Summon Hearing to be finalised by the dealing Member with the support of his/her concerned dealing hand and/or Lawyer/Expert assisting in the matter and will be moved on file through Registrar and Member Secretary to the Chairperson for approval.

The recommendations (post-hearing) to be issued (under Section 15 of the CPCR Act, 2005) by the Member Secretary/Registrar, as decided in accordance with Para (v) above.

- (xiii) Under the guidance of Registrar, the required coordination for a Summon Hearing will be looked after by the concerned dealing hand with the support and facilitation of the Coordinator of the Complaints Section as well as the General Administration Section (for logistics). Such coordination work would involve, inter alia: obtaining confirmations from the officer(s)/person(s) who have been summoned, informing the same to all concerned; taking the attendance of the official(s) and person(s) attending the summons and supplying the same to the Bench; requisitioning arrangements for recording facilities and, staff to be posted on duty, etc. The IT Section of the Commission will assist in the process of audio/video recording or in the presentation of any audio visual documentary evidence before the Bench. The Bench will have support of required number of PPSs/PAs and/or concerned dealing hand for documenting the proceeding, taking statements, etc.

7. Constitution of Bench

- (i) The concerned dealing hand/in-charge of the case shall prepare the gist of the case and the self-contained note together with the relevant papers giving details of the circumstance relating to the case leading to be heard by the Bench. The requisite number of copies shall be prepared for use of all the members of the Bench. The case file and the relevant papers shall be forwarded to the Registrar or any other Designated Officer who will put up the file to Chairperson for seeking order for issuing summons/hearing.
- (ii) Depending on the seriousness of the matter and gravity of the complaint/suo motu cognizance, the Chairperson may constitute a Bench (two

members/Full Bench) of the Commission for hearing, by way of special or general orders.

- (iii) The Presenting Officer or Designated Officer shall prepare the 'Cause List' (being the scheduling of the summons) in cases to be heard by the 'Bench'. Such 'Cause List' shall be uploaded and updated on the website of the Commission and also circulated to the concerned Members.
- (iv) The Registrar and in his absence the Designated Officer shall invariably issue the summons. The summons so issued shall provide a timeline of at least 15 days to the persons/officials summoned, except in cases of extreme emergency.
- (v) It shall be the duty of the Presenting Officer to study and present the case and render such other assistance as may be required, for consideration and disposal of the case.
- (vi) The Presenting Officer shall assist each Member of the Bench, wherein the persons summoned in a case will be subjected to examination on oath and their statement will be recorded accordingly.
- (vii) The Presenting Officer will record the proceedings of the case and seek the records/orders directly from the Bench in the case.

8. Action to be taken after an inquiry/hearing and follow up action

- A. Section 15 of CPC Act, 2005 provides steps to be taken after an inquiry. These have been listed below:
 - (i) Where the inquiry discloses the commission of violation of child rights of a serious nature or contravention of provisions of any law for the time being in force, it may recommend to the concerned government or authority to initiate proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;
 - (ii) Approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;
 - (iii) Recommend to the concerned government or authority for the grant of such interim relief to the victim or the members of his family as the Commission may consider necessary.

9. Procedure to be adopted after Inquiry

- (i) Wherever the inquiry by the Commission reveals a child rights violation/deprivation, it may recommend to the concerned government/authorities to initiate the departmental process of inquiry/process of law against

those accused of irregularity and violation of legal provisions under various child jurisprudence, as it deems fit.

- (ii) A copy of the Inquiry/Investigation Report together with its recommendations shall be forwarded to the concerned government department(s)/agency(ies) and the complainant within 15 days of the examination.
- (iii) The concerned government department(s)/agency(ies) shall be required to submit their Action Taken Report/comments on the recommendations made by the Commission within prescribed time.
- (iv) The Commission on analysis of the inquiry/investigation report may also approach the respective High Court of the State concerned or the Supreme Court with its findings/recommendations for such directions, orders or writs as the Commission may deem appropriate.
- (v) The Commission may also approach the court for grant of such interim relief to the victim/s in order to maintain status quo.

10. Analysis of Action Taken Report (ATR)/Investigation Report

- (i) The Registrar shall scrutinise ATR/get the ATR and communications received from the concerned authority(ies)/agency(ies)/department(s)/person(s) scrutinised through the concerned dealing hand empanelled by NCPCR for the purpose. The scrutiny of the ATR may include:
 - (a) Whether the response to complaint/cause of action has been adequately acknowledged by the concerned authorities.
 - (b) Whether the concerned authorities have successfully been able to relate/reply to the information called for.
 - (c) The lapses if any, observed in procedures adopted and the inaction in handling the issue to be highlighted in the analysis of the ATR.
 - (d) Whether the information received is sufficient for examining the matter fully? If not, further details to be called for, to be highlighted.
 - (e) Whether any relief is provided to the victim or his/her family by the concerned authorities may be highlighted, while analysing the ATR.
- (ii) It shall be the duty of the Registrar to monitor the disposal of the cases and apprise the Complaints Review Committee and the Commission on the pace and progress of the disposal of the complaints.
- (iii) The Registrar shall also present the Commission a report on the operation of qualitative aspect of the complaint redressal mechanism in the Commission, after obtaining reports from the Complaints Section.

(A complete set of Standard Operating Procedures (SOPs) for processing of complaints, Inquiry and Investigations and follow up thereafter is enclosed in **Annexure-VI**).

Monitoring Function

Section 13.1 (b) and 13.1 (f) of the CPCR Act, 2005

Section 13.1 (b)

Present to the Central Government annually and at such other intervals, as the Commission may deem fit, reports upon the working of those safeguards.

Section 16 (1)

The Commission shall submit an annual report to the Central Government and the State Government concerned and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

Section 16 (2)

The Central Government and the State Government shall cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively, as the case may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any, within a period of one year from the date of receipt of such report.

Section 16 (3)

The annual report shall be prepared in such form, manner and contain such details as maybe prescribed by the Central Government.

Section 13.1 (f)

The Commission shall study treaties and other international instruments and undertake periodical review of existing policies, programmes and other activities on child rights and make recommendations for their effective implementation in the best interest of children.

Overall Monitoring Function

Monitoring processes require data collection and analysis, involving not only official statistics, but where possible, reports of field observations, investigations, fact-finding delegations. It needs to draw on diverse sources of information, including studies and standards, both domestic and international, relating to violations or progressive change in the status of child rights and requires looking at qualitative and quantitative measures or indicators to assess what movement there has been from key benchmarks established at the start of the monitoring period and whether targets set at that time have been met.

This sub-chapter provides details on role of the State in promoting and supporting the monitoring of child rights and channels for monitoring child rights as mandated in the CPCR Act through presentation of Reports and Inspection visits. It also provides information on undertaking the monitoring responsibilities outlined in the RTE Act, 2009, POCSO Act, 2012 and JJ Act, 2015.

Reports

Annual reports serve to elaborate to the government, elected representatives and the public at large the Commission's performance of its core functions as mandated under the CPCR Act and Rules during the year.

Annual and special reports of State Commissions: As per the CPCR Act (Section 23), the State Commissions are required to submit an annual report to the State Government and at any time may submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

The State Government shall cause all the reports referred to above to be laid before each House of State Legislature, where it consists of two Houses, or where such Legislature consists of one House, before that House along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

The annual report shall be prepared in such form, manner and contain such details as may be prescribed by the State Government. (A basic template of Annual Report being used by NCPCR is at **Annexure-VII**).

Accounts and audit of Commission: As per the CPCR Act (Sec. 30), the State Commissions shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the State Government in consultation with the Comptroller and Auditor General of India.

The accounts of the State Commission shall be audited by the Comptroller and Auditor General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the State Commission to the Comptroller and Auditor General.

The Comptroller and Auditor General and any person appointed by him in connection with the audit of the accounts of the State Commission under this Act shall, have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the State Commission.

The accounts of the State Commission as certified by the Comptroller and Auditor General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the State Government by the State Commission and the State Government shall cause the audit report to be laid, as soon as may be after it is received, before the State Legislature.

Inspections

Section 13.1 (i) of the CPCRA Act, 2005

Inspect any juvenile custodial home or any other place of residence or institution meant for children, under the control of the Central Government or any State Government or any other authority including any institution run by a social organisation, where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities remedial action, if found necessary.

Considering that child care institutions are ‘closed settings’ and children do not get opportunities to express themselves and violations go unreported, the CPCRA Act provides for Commissions for the Protection of Child Rights to engage with this issue to safeguard their interests. A very broad view of institutional settings has been taken and entails separation of children from ‘parental or familial care’ into residential facilities.

Inspections by Commissions for the Protection of Child Rights could be undertaken under any of the following circumstances:

- In pursuance of directions of Courts to inquire and submit reports
- To monitor implementation of provisions in law and policy and to identify systemic flaws

- As a response to media reports on violations
- In response to complaints filed by children or anyone else on their behalf
- As part of any research study on the status of children in institutional care
- As routine visits to elicit children's views on standards of care

Inspections Based on Court Directions

NCPCR has carried out inspections of several Children's Homes (both Government and NGO-run) pursuant to the directions of the Hon'ble High Court in *Amardeep Malik vs State Govt. of NCT of Delhi and Ors.* [W.P. (Crl.) 694/2012, CRL. M.A. 6000 and 60001/2012 vide Order dated 01.06.2012), wherein NCPCR has been given the responsibility of monitoring the functioning of child care institutions in the State of Delhi to review the infrastructure and standards followed in the institutions. NCPCR has been diligently undertaking the same with the support of NGOs since mid-2012. The reports on the same have been shared with the Government of NCT of Delhi and filed in the High Court through an affidavit periodically.

Monitoring as Per Provisions in Law

As part of its monitoring responsibilities, Commissions during state/district visits may take the opportunity to make unannounced visits to child care institutions, hostels, residential schools run by various departments and NGOs. This could be undertaken in collaboration with CWCs/JJBs where possible.

Provision in the CPCR Act, 2005

Reviewing the functioning of monitoring structures mandated in the JJ Act, 2015 would also provide a good insight into government's commitment in ensuring highest standards of care. Commissions for the Protection of Child Rights can invoke their mandate under Section 13 (I) (i) of the CPCR Act and undertake the above exercise.

Provision in the JJ Act, 2015

Inspection Committees

All child care institutions housing children, whether registered or registered to be fit under the JJ Act, 2015 are subject to inspections.

There are various provisions of the JJ Act requiring monitoring by NCPCR and State Commission for Protection of Child Rights (SCPCRs). Section 54 requires the State Governments to appoint inspection committees at the state and district level with powers to inspect child care institutions and facilities housing children. The idea is to ensure that no child care institution housing children in need of care and protection goes unregistered under the JJ Act and that standards of care and protection as laid down in the Act and the rules are not compromised. The NCPCR

and State Commissions have a responsibility to ensure that these committees are appointed and made functional in accordance with Section 54 of the JJ Act, 2015 and Rule 41 of the Model JJ Rules, 2016.

A member of SCPCR can also be one of the seven members comprising the state level inspection committee as per Rule 41(2) of the Model JJ Rules, 2016. It is therefore important to be familiar with the provisions regarding the role of inspection committees under the JJ Act and understand the areas where the NCPCR and SCPCRs have a role to play.

Section 54(2) of the JJ Act, 2015 requires inspection committees to visit the child care institutions under their jurisdiction once in every three months and submit a report with their findings and recommendations to the District Child Protection Units (DCPU)/State government within one week of the visit.

While Rule 41 (4) and (5) of Model JJ Rules, 2016 allows random inspections of the institutions housing children to determine whether such institutions are housing children in need of care and protection and submit a report to the Secretary of the concerned Department, Rule 41 (6) requires the recommendations to be forwarded to the State Child Protection Societies (SCPSs)/DCPU for improvement and development of the institutions in accordance with the provisions of the Act and the Rules.

Rule 41 (6) makes it mandatory for the inspection committee to interact with the children during visits to take their feedback and determine their well-being.

Similar functions are to be carried out by District level inspection committees. While Members of SCPCR cannot be part of the District Inspection Committees, SCPCRs can be part of independent evaluations to be carried out by the state governments as well as the central government under Section 55(1) of the JJ Act, 2015.

Management Committees and Children's Committees

Section 53(2) of the JJ Act, 2015 states that every child care institution shall have a Management Committee for the management of the institution and monitoring the progress of every child. A Member of the SCPCR can be a special invitee on the Management Committee of child care institutions with the consent of the Chairperson of the Management Committee i.e. the DCPO [Rule 39 (3) (x)].

The Management Committee is required to:

- Meet at least once every month [Rule 39 (4)]
- Call for an emergency meeting of the Management Committee to address problems requiring immediate attention [Rule 39 (7)]

- Carry out monthly verification of all records and registers [Rule 61(3) (xxix)]
- Deliberate upon and approve modification of the individual care plan and/or the routine activities of the child [Rule 62 (6) (x) and Rule 69 (J) (3)]
- Permit approved visitors to Child Care Institutions [Rule 78 (1)]
- Decide on disposal of valuables and other articles and money deposited in the name of a child in case there is no claimant after six months of death or escape of such child [Rule 72 (1) (vii)]
- Receive quarterly progress reports from Rehabilitation cum Placement officer on progress made by the child on regular basis [Rule 65 (3) (viii)] and [Rule 69 (J) (2)]
- Receive a copy of the report prepared by the person-in-charge of the institution in case of an incident of unacceptable behaviour by a child for planning a long term strategy for prevention of such incidents [Rule 69 (M) (2)]
- Receive report from the person-in-charge of refusal to deliver or issue a letter written or received by a child with reasons therefor [Rule 74 (5)]
- Receive a copy of the report prepared by the person-in-charge in the event of an incident of abuse or exploitation in the institution and action taken in the next meeting [Rule 76 (2) (vi)]

The Minutes Register of Management Committee is to be maintained by the person-in-charge of an institution [Rule 77 (19)].

One of the important functions of the Management Committee is to engage with children residing in the institution and their representatives from the Children's Committee, who are supposed to be part of the Management Committee.

As per Section 53(3) of the JJ Act, 2015,¹ every Officer-in-Charge of an institution for children is required to facilitate the setting up of Children's Committees for the safety and well-being of children in the institution and provide essential support and materials including stationary, space and guidance for their effective functioning as per Rule 40 (4), (5) and (6) of JJ Rules, 2016.

Such Committees have to be set up for different age groups of children residing in an institution, i.e. in the age group of 6 to 10 years, 11 to 15 years and 16 to 18 years [Rule 40 (1) of JJ Rules, 2016].

As regards engagement with children and their committees, the Management Committee is required to:

- Consider and review matters concerning Children's Committees [Rule 39 (4) (xx)]
- Set up a complaint and redressal mechanism in every institution and a Children's Suggestion Box at a place easily accessible to children, closer to

their residence or rooms or dormitories, which shall be checked every week by the Chairperson of the Management Committee having the key to the Children's Suggestion Box [Rule 39 (5) and (6)]

- Duly record action taken by the Management Committee on complaints or suggestions received from children and communicate the same to the Children's Committees [Rule 39 (11)]
- Receive from the Children's Committee and peruse the register maintained by the Children's Committee during the monthly meetings of the Management Committee [Rule 40 (3)]
- Seek a report from the person-in-charge on the setting up and functioning of the children's committees, review these reports in their monthly meetings and take necessary action or place the same before the Board or the Committee, if required [Rule 40 (7)]

Functions of the NCPCR/SCPCRs

NCPCR and SCPCRs have powers under Section 13(d), (e) and (j) of the CPCR Act, 2005 to examine all factors that inhibit the enjoyment of rights of children, to look into the matters relating to children in need of special care and protection; and to take suo motu cognizance relating to: (i) deprivation and violation of child rights; (ii) non-implementation of laws providing for protection and development of children; and (iii) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children.

The Commissions have a clear mandate under Rule 91 (1 (i) and (iii) of the Model JJ Rules 2016 to review the setting of institutions under the JJ Act, 2015 and to perform functions in consultation with the Central and State Government as listed therein.

Research Study on the Status of Children in Institutional Care

Commissions **may** directly undertake or commission research studies on various facets of institutional care as rehabilitation outcomes and develop SOPs and protocols for protection, reformation and rehabilitation of children.

Inspections Based on Complaints

During visits to any residential care service, Commissions for the Protection of Child Rights **may** record information, based on interaction with children in privacy if necessary, overall observation of functioning of the institution, interaction with personnel and review of records maintained, to gain a comprehensive picture of the standard of care provided to the children and the children's perspective of care provided. If necessary, focus group meetings may be held with the children to give

them an opportunity to share their thoughts and experiences which would provide the Commissions a good feedback on their living experiences and expectations.

Areas of Inspection

- Infrastructure: Availability of adequate infrastructure. Condition and maintenance of flooring, roof, windows, window panes, fans, lights, curtains, ventilation, heating and cooling arrangements, drinking water, toilets, bathing, kitchen, fire extinguishers, first aid kit, age appropriate and disabled friendly infrastructure.
- Educational Facilities and Vocational Training: includes education provisions under RTE, supplementary education, special education for children with special needs, availability and accessibility of books in the library etc.
- Health status of children and availability of medical care: Appropriate stocking and storing of medicine, within the expiry date. Availability of isolation room for children suffering from contagious disease, availability of refrigerator for preserving medicines. Equipment for children with special needs – wheelchairs, prosthetic devices, hearing aids, braille. Provision of occupational therapy where required.
- Food/Meals/Diet/Nutrition.
- Clothes/Bedding and other personal requirements.
- Psycho-social support to children and mental healthcare where required.
- Access to reformative and rehabilitative services.
- Recreational facilities.
- Care Plans prepared with periodic review: includes Rehabilitation Card for every child, involvement of parents/guardians of children.
- Details of runaway children, death of children.
- Adequacy of staff, training and capacity of the building provided.
- Maintenance of sanitation and hygiene.
- Functioning of Children’s Committee.
- Functioning of the online Child Adoption Resource Information and Guidance System for facilitating and monitoring adoption programme.
- Functioning of the Inspection Committees and Management Committees.
- Access to legal aid for children in institutions or those produced before the CWC and the JJBs, as mandated in the Constitution of India as well as the JJ Act, 2015 and the Legal Services Authority Act, 1987.
- Assistance provided to children for birth registration and obtaining proof of identity by the CWC, JJBs and child care institutions as provided under the JJ Act, 2015 as well as the judgment of Delhi High Court in WP(C) 8889 of 2011.
- Child Protection Policy in place in every institution that has been signed by all personnel. This includes background check of all those employed and compulsory attendance of induction training to gain child rights perspective to caring for the children. Inputs from CWCs and JJBs about the functioning of

the child care institutions in their jurisdiction would be useful as they routinely interact with children from institutions.

Follow-Up Action

A report with observations on above listed facilities and recommendations should be prepared highlighting whether there is compliance with the provisions of the JJ Act 2015 and Rules framed by the Centre and the States.

- If during inspection, cases of violation against children are reported, immediate action must be taken and children affected moved out to another location.
- Attention should be drawn to setting standards for institutional care*² which would include promoting child participation and children's engagement with the running of institutions and opportunities for children to be engaged with community programmes.
- Institutions should be guided to promote family and community based care and as where children cannot leave institutions, small group care should be created within homes so that children receive more personalised care and attention.

Monitoring Specific Laws

The Commissions have a clear mandate, under Section 13(1) (a) to examine and review safeguards provided by or under any law for the time being in force for the protection of child rights and recommend measures for their effective implementation.

Rule (1) (a) of the NCPDR Rules states, 'Analyse existing law, policy and practice and assess compliance with United Nations Convention on the Rights of the Child (UNCRC). Undertake inquiries and produce reports on any aspects of a policy or practice affecting children and comment on proposed new legislation from child rights perspective'.

Further, Section 13(1)(i) of the CPDR Act links its responsibility with that of monitoring the functioning of child care institutions which fall within the purview of the JJ Act, 2015 for taking up remedial measures where found necessary to ensure that they provide for the treatment, reformation and protection of children entering care.

In addition, Commissions have been assigned a special monitoring role in the RTE, POCSO and the JJ Acts. In this sub-chapter, there is a narrative on how Children's Commissions can effectively play out their responsibilities in monitoring the implementation of the three laws where a specific monitoring role has been assigned.

- Juvenile Justice (Care and Protection of Children) Act, 2015
- Right of Children to Free and Compulsory Education Act 2009
- Protection of Children against Sexual Offences Act, 2012

The Juvenile Justice (Care and Protection of Children) Act, 2015

The JJ Act 2015 is a legislation enacted to create a separate system to dispense justice to children and ensure their care, protection and rehabilitation. It replaces the Juvenile Justice Act of 2000 as amended in 2006 and 2011. The Act seeks to achieve the Constitutional guarantees to the children of the country and foster international commitments as contained in the UNCRC, ratified by India on 11 December 1992 and the Hague Convention on Protection of Children and Co-operation in Respect of Inter country Adoption, 1993, among others. It provides for a detailed structure, mechanisms, procedures and standards to be followed for the care, protection, rehabilitation and reintegration of children in difficult circumstances, with emphasis on non-institutional measures such as adoption, foster care and sponsorship. It also lays down the adjudication mechanism and procedural safeguards for dealing with cases of children in conflict with law. The Act seeks to address challenges in the previous Act such as delays in adoption processes, lack of foster care and sponsorship programmes, high pendency of cases, accountability of institutions, effective monitoring of implementation of the Act, etc. The Act emphasises on rehabilitation of children, fulfilment of their mental and physical health, educational and developmental needs, including vocational training and life skills, and establishes the importance of individual care plans as well as their follow-up by the concerned authorities. It further has a special provision inserted for the possibility of trying 16-18 year olds committing heinous offences, as adults. A heinous offence is defined as one for which the minimum punishment under the Indian Penal Code is seven years.

Monitoring Mechanisms within the JJ Act, 2015 and the ICPS

Within the JJ Act, 2015

- **Inspection Committees, Management Committees and Children's Committees for monitoring institutional care standards:** Inspection Committees at the state and district level constituted by respective jurisdictional governments and Management Committees and Children's Committees constituted within each institution to ensure standards of care and protection and best practices in accordance with the principles stated in the JJ Act, 2015 and as spelled out in the Model JJ Rules, 2016 are followed.
- **Inspections and verifications to be carried out by JJBs and CWCs:** Under Rule 27 (4) of the Model JJ Rules, 2016 the Board or the Committee after proper inspection and inquiry may recognise an institution or organisation as per facility.

- **Rule 28 (3) requires the Board or the Committee after verifying the credential of the person, may appoint any person as a fit person.**

(i) **Monitoring of JJBs and CWCs:** The CWCs and JJBs as statutory structures are the **authorities** for the care, protection and rehabilitation of children in need of care and protection and children in conflict with the law respectively and are to ensure that the JJ System at every turn provides for the best interest of the children. They are supposed to maintain Case Monitoring Sheets of every case and every child, even if there is more than one child involved in a case, and furnish quarterly report about pendency of the cases, visits to homes etc. The JJBs are required to submit their reports to the Chief Judicial Magistrate/Chief Metropolitan Magistrate and the District Magistrate [Section 16(3) of JJ Act, 2015 and Rule 12 (2) (i) and (ii) of the JJ Model Rules, 2016], while CWCs are required to report to the District Magistrates [Section 36(4) of JJ Act, 2015 and Rule 20 (2) of the JJ Model Rules, 2016]. Chief Judicial Magistrate/Chief Metropolitan Magistrate will review the pendency of Board once in three months (Section 16(1) of the JJ Act, 2015). The Committee will submit quarterly report to District Magistrate for review of pendency of cases (Section 36(4) of the JJ Act, 2015). In addition, six monthly review of the number of cases pending before the Board, duration of such pendency, nature of pendency and reasons thereof is to be carried out by a high level committee chaired by the Executive Chairperson of the State Legal Services Authority, the Home Secretary, the Secretary responsible for the implementation of JJ Act in the State and a representative from a voluntary or non-governmental organisation (nominated by the Chairperson) [Section 16(2) of JJ Act, 2015].

Even the performance of every member of the Board and Committee is to be appraised on a quarterly basis and the report submitted to the Selection Committee. This is the responsibility of the District Judge in the case of Members of the Juvenile Justice Board [Rule 12 (2) (iii) of JJ Model Rules, 2016] and the District Magistrate in case of Members of the CWC [Rule 20 (3) of JJ Model Rules, 2016].

- **Independent evaluations of various structures under the Act:** Independent evaluations can be carried out by the central or state governments once in three years to look into the functioning of Board, Committee, Special Juvenile Police Units (SJPU), registered institutions, or recognised fit facilities and

persons [Section 55(1) of JJ Act, 2015]. These evaluations can be carried out by academic institutions and such other institutions or bodies as may be prescribed by the concerned government and could include SCPCRs [Section 55(1) of JJ Act, 2015 read with Rule 42 (1) of JJ Rules, 2016].

- While every police station is supposed to have at least one Child Welfare Police Officer (CWPO), who is a person not below the rank of assistant sub-inspector, with aptitude, appropriate training and orientation, the SJPU are to be set up at district and city level and also Railway Stations to co-ordinate all functions of police related to children. These units are to be headed by a police officer not below the rank of a Deputy Superintendent of Police or above [Section 107 of JJ Act, 2015].

The transfer and posting of designated CWPO may be within the SJPU of other police stations or the district unit [Rule 86 (4) of JJ Rules, 2016].

The names and contact details of the SJPU or CWPO have to be displayed at a conspicuous location in the police stations, Child Care Institutions, CWCs, JJBs and the Children's Courts [Rule 86 (11) of JJ Rules, 2016]. It is important to ensure that these mandatory structures and its officers are in place and standards of care and protection are complied with.

- **Monitoring and Follow-up of Foster care by CWC:** Section 44(8) of the JJ Act, 2015 and Rule 23 (18) of the JJ Rules, 2016 require CWCs to carry out monthly inspections of foster families to check the well-being of the child and remove the child from such family if required and shifted to another foster family.

Monitoring by SCPS: The Member Secretary of the SCPS is the Nodal Officer in the State for the implementation of the Act and the rules [Rule 84 (3) of the JJ Model Rules, 2016] and is also the Chairperson of the State Inspection Committee constituted for monitoring child care institutions [Rule 41 (2) of JJ Rules, 2016]. The SCPS is responsible for monitoring the following tasks under Rule 84 of JJ Rules, 2016:

- Overseeing the implementation of the Act and the rules framed there under in the State and supervision and monitoring of agencies and institutions under the Act;
- Addressing road-blocks, issues, complaints received regarding care and protection of children;
- Ensure that all institutions set up under the Act and the rules are in place and performing their assigned duties;

- (iv) Reviewing reports received from various DCPU on the functioning of institutions in various districts and take action to facilitate the protection of children wherever necessary and monitoring the functioning of the DCPU;
- (v) Develop programmes for foster care, sponsorship and aftercare;
- (vi) Inquire into, seek reports and make recommendations in cases of death or suicide in Child Care Institutions and under other institutional care;
- (vii) Ensure inter-department coordination and liaising with the relevant departments of the State and Central Governments and SCPSs of other States or Union Territories;
- (viii) Networking and coordinating with civil society organisations working for the effective implementation of the Act and the rules;
- (ix) Maintaining a state level database of all children in institutional care and family based non-institutional care and updating it on a quarterly basis;
- (x) Maintaining a database of Child Care Institutions, Specialised Adoption Agencies, open shelters, fit persons and fit facilities, registered foster parents, sponsors, aftercare organisations and other institutions at the State level;
- (xi) Maintaining a database of medical and counselling centres, de-addiction centres, hospitals, open schools, education facilities, apprenticeship and vocational training programmes and centres, recreational facilities such as performing arts, fine arts and facilities for children with special needs and other such facilities at the state level;
- (xii) Monitoring and administering the Juvenile Justice Fund set up by the State Government including disbursal of funds to the DCPU, SJPU and police stations, as the case may be;
- (xiii) Maintaining separate accounts for all funds received by the SCPS such as the Juvenile Justice Fund, funds under schemes of Central and State Government and getting the same audited;
- (xiv) Generate awareness among public on various aspects of the Act and the rules made thereunder specifically the existing institutional framework, rehabilitation measures, penalties, procedures for better protection of children;
- (xv) Organise and conduct programmes for the implementation of the Act including training and capacity building of stakeholders;
- (xvi) Commission research programmes on child protection;
- (xvii) Co-ordinate with State Legal Services Authority and law schools; and
- (xviii) Any other function for the effective implementation of the Act and the rules made thereunder.

Monitoring by DCPU: The DCPUs are answerable to the state government through the SCPS. They have an important support and coordination role under the JJ Act to ensure all institutions and services required at the district level for implementation

of the JJ Act are in place and functional. The DCPUs have to maintain a database of child care institutions, specialised adoption agencies, open shelter, fit persons and fit facilities, registered foster parents, aftercare organisations and institutions, medical and counselling centres, de-addiction centres, hospitals, open schools, education facilities, apprenticeship and vocational training programmes and centres, recreational facilities such as performing arts, fine arts and facilities for children with special needs and other such facilities, special educators, mental health experts, translators, interpreters, counsellors, psychologists or psycho-social workers or other experts who have experience of working with children in difficult circumstances and forward the same to the Boards, the Committees, the Children's Courts and the SCPS. As part of their monitoring role they have to carry out the following tasks [Rule 85 of JJ Rules, 2016]:

- (i) Maintain report of quarterly information sent by the Board about children in conflict with law produced before the Board and the quarterly report sent by the Committee;
- (ii) Arrange for individual or group counselling and community service for children;
- (iii) Conduct follow up of the individual care plan prepared on the direction of the Children's Court for children in the age group of sixteen to eighteen years found to be in conflict with law for committing heinous offence;
- (vi) Conduct review of the child placed in the place of safety every year and forward the report to the Children's Court;
- (v) Maintain a list of persons who can be engaged as monitoring authorities and send the list of such persons to the Children's Court along with bi-annual updates;
- (vi) Maintain record of runaway children from Child Care Institutions;
- (vii) Identify families at risk and children in need of care and protection;
- (viii) Assess the number of children in difficult circumstances and create district-specific databases to monitor trends and patterns of children in difficult circumstances;
- (ix) Periodic and regular mapping of all child related services at district for creating a resource directory and making the information available to the Committees and Boards from time to time;
- (x) Facilitate the implementation of non-institutional programmes including sponsorship, foster care and aftercare as per the orders of the Board or the Committee or the Children's Court;
- (xi) Facilitate transfer of children at all levels for their restoration to their families;
- (xii) Ensure inter-departmental coordination and liaise with the relevant departments of the State Government and SCPS and other DCPU in the State;

- (xiii) Network and coordinate with civil society organisations working under the Act;
- (xiv) Inquire into, seek reports and take action in cases of death or suicide in child care institutions and under other institutional care and submit the reports to the SCPS;
- (xv) Look into the complaints and suggestions of the children as contained in the children's suggestion box and take appropriate action;
- (xvi) Be represented on the Management Committees within the Child Care Institutions;
- (xvii) Maintain a district level database of missing children in institutional care and uploading the same on designated portal and of children availing the facility of Open Shelter and of children placed in foster care;
- (xviii) Maintain a database of child care institutions, specialised adoption agencies, open shelter, fit persons and fit facilities, registered foster parents, aftercare organisations and institutions etc. at the district level and forward the same to the Boards, the Committees, the Children's Courts and the SCPS, as the case may be;
- (xix) Maintain a database of medical and counselling centres, de-addiction centres, hospitals, open schools, education facilities, apprenticeship and vocational training programmes and centres, recreational facilities such as performing arts, fine arts and facilities for children with special needs and other such facilities at the district level and forward the same to the Boards, the Committees, the Children's Courts and the SCPS;
- (xx) Maintain a database of special educators, mental health experts, translators, interpreters, counsellors, psychologists or psycho-social workers or other experts who have experience of working with children in difficult circumstances at the district level and forward the same to the Boards and the Committees and the Children's Court and the SCPS;
- (xxi) Generate awareness and organise and conduct programmes for the implementation of the Act including training and capacity building of stakeholders under the Act;
- (xxii) Organise quarterly meeting with all stakeholders at district level to review the progress and implementation of the Act;
- (xxiii) Submit a monthly report to the SCPS;
- (xxiv) Notify the State Government about a vacancy in the Board or the Committee six months before such vacancy arises;
- (xxv) Review reports submitted by Inspection Committees and resolve the issues raised through coordination among the stakeholders;

- (xxvi) Provide secretarial staff to the Committees and the Boards;
- (xxvii) All other functions necessary for effective implementation of the Act including liaising with community and corporates for improving the functioning of Child Care Institutions.

Within the ICPS National level

- MWCD has developed a standardised format and a set of input, output and outcome indicators for evidence based monitoring at National, State and District levels. For details see Revised ICPS available on the MWCD website.³ At each level, this is supported by an automated Management Information System (MIS). The DCPU collects, upgrades and maintains disaggregated database of all children in institutional and non-institutional care as well as data of vulnerable children in the district. The database is provided to and maintained by the SCPS. These reports are examined in the MWCD and a feedback for further action is provided to the states.
- MWCD's Project Approval Board (PAB) has been constituted to scrutinise and approve implementation plans and financial proposals from States/UTs. The PAB also monitors and reviews the progress of the implementation of the scheme from time to time. The Secretary, MWCD is the Chairperson of the PAB and there is representation from several other key ministries.

The MWCD further supervises the implementation of the ICPS at national level by:

- Holding an annual review meeting of State/UT Secretaries
- Holding quarterly review meetings in the States/UTs
- Providing technical support to States/UTs
- Documenting best practices and instituting national level awards to encourage excellence in service delivery.
- MWCD arranges social audit through experts/external agencies deputed by MWCD.

State Level

The State Child Protection Committee (SCPC) headed by the Chairpersonship of the State Principal Secretary/Secretary and which includes government departments like health, education, labour, housing, judiciary, home, railways and members of the local bodies like PRIs, ULBs, voluntary organisations and members of the civil society will monitor the implementation of ICPS on the basis of the state specific indicators. The Chief Secretary of the concerned State/UT shall conduct an annual

review of the implementation of the ICPS at State level. District, Block and Village level Child Protection Committees are also to be constituted to recommend and monitor the implementation of child protection services at their respective levels of governance.

State Responsibilities

- To review the performance of various systems and adequacy of infrastructure such as the network of child protection service providers both statutory and prescribed by law (JJBs, CWCs and SJPU), allied systems (Selection Committee, Advisory Boards, State Adoption Resource Agency (SARA) etc.) as well as care and rehabilitation services against measurable child protection indicators.
- To evaluate the extent and quality of data banking with DCPUs as at the district level they are expected to be the repository of accurate information on the network of services provided by all structures (including individual case histories/care plans) and including the availability of human and financial resources.
- To assess the range of knowledge and skill building support accessible by child protection functionaries through the National Institute of Public Cooperation and Child Development (NIPCCD) national and regional centres and State's own efforts either directly or in partnership with civil society organisations.
- To measure the demand for child protection services based on socio-economic situations which have been gathered through district level needs survey.
- To review the execution of the road map for intervention prepared to reach the last child in the district.
- To undertake financial and performance audit as per norms of the Comptroller & Auditor General of India at the Central and State/UT levels.

Monitoring Role of NCPCR/SCPCRs

By virtue of Section 109(1) and (2) of the JJ Act, 2015, NCPCR and the State Commissions are mandated to monitor the implementation of the provisions of JJ Act and inquire into any matter relating to any offence under this Act and to perform various functions in consultation with the Central and State Government.

Section 109(3) requires the Commissions to mention activities undertaken in this regard in their annual reports. Under Rule 91 of the JJ Model Rules, 2016, the NCPCR and SCPCRs are specifically required to review setting up of institutions created under the JJ Act.

In addition, developing protocols for reformation and rehabilitation of children and developing training and sensitisation materials and modules as well as information

material detailing the rights of the child victims or witnesses and their families in local languages are some of the key monitoring functions assigned to the National and State Commissions for Protection of Child Rights under Rule 91 of the JJ Model Rules, 2016.

Independent Evaluations and the role of NCPDR/SCPCRs: Section 55(1) of the JJ Act, 2015 provides scope for the NCPDR and SCPCRs to play an active role in carrying out independent evaluations to evaluate the functioning of the Board, Committee, SJPU, registered institutions, or recognised fit facilities and persons. The SCPCRs can be part of the multi-disciplinary Committee that may be set up for such independent evaluations by the central government/state government under Rule 42 of the JJ Model Rules, 2016.

Variance in Mandate, Power and Functions of the CWC and JJB and Child Rights Commissions

Mandate

The CWCs and JJBs are the authorities for the care, protection, treatment, and rehabilitation of children who are 'in need of care and protection' and 'children in conflict with the law' respectively while Commissions have a mandate to handle all cases of child rights violations with the definition of "child rights" as adopted in the UNCRC of 1989 ratified by the Government of India on the 11 December 1992. The Commissions are also entrusted to handle complaints relating to violation of children's right to free and compulsory education under the Right of Children for Free and Compulsory Education Act, 2009 (RTE Act) and monitor the implementation of the Protection of Children against Sexual Offences Act, 2012 as well as the Juvenile Justice (Care and Protection of Children) Act, 2015.

Powers

- The CWCs and JJBs act as a Bench of Magistrates and shall have the powers conferred by the Code of Criminal Procedure, 1973, on a Metropolitan Magistrate or as the case may be, a Judicial Magistrate of first class.
- The Commissions, on the other hand shall, while inquiring into any matter have all the powers of a Civil Court as trying a suit under the Code of Civil Procedure, 1908. These powers include: (a) summoning and enforcing the attendance of any person and examining him on oath; (b) discovery and production of any document; (c) receiving evidence on affidavits; (d) requisitioning any public record or copy thereof from any court or office; and (e) issuing commissions for the examination of witnesses or documents.

- Also, under Section 14(2) of the CPC Act, 2005, Commissions shall have the power to forward any case which would amount to contempt of court in a judicial proceeding, to a Magistrate having jurisdiction to try the same, and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973.

Judicial Directions to NCPDR for Monitoring the Implementation of the JJ Act

NCPDR has been appointed as a Nodal Agency by the Supreme Court of India in *Bachpan Bachao Andolan vs. UOI and Others* [WP (C) 51 of 2006] and vide order dated 22 January 2010 for monitoring the implementation of the directions passed by the Supreme Court in the matter from time to time. The main judgment was delivered on 18 April, 2011. The directions issued on 22 January 2010 relating to constitution of CWCs, JJBs and SJPU are being followed up with the State Government.

These court directions remain valid for the JJ Act 2015 as it replaces the repealed JJ Act of 2000 and its amendment in 2006 and 2011.

In *Court on its Own Motion vs. Department of Women and Child Development, Govt. of NCT of Delhi* [W.P. (C) No. 8889 of 2011], the High Court of Delhi vide order dated 11.05.2012, directed the NCPDR to conduct an inquiry in all the jails in Delhi to ascertain whether there are any children in conflict with the law languishing in jails.

The specific directions for the NCPDR in this case include:

- (i) NCPDR shall constitute a panel of at least ten (10) persons to make visits to various jails in Delhi in order to find out if there are any persons lodged in such jails who should have been the beneficiaries of the JJ Act. Members of such panel may visit various jails as per the schedule drawn in consultation with/intimation to the Jail Authorities.
- (ii) Reports of such visits along with the list of probable juveniles shall be forwarded to the Member Secretary of Delhi State Legal Services Authority (DLSA), Jail Authorities and the JJBs concerned for further action. NCPDR shall devise a Proforma which shall be used by such visitors and shall be supplied to all such visitors on the panel. Such filled up proformas will be used to compile a report.
- (iii) Such persons shall be only those persons who are in a position to and are willing to visit various jails in Delhi at least once a month but it may conduct such visits more frequently if required.
- (iv) NCPDR shall make arrangements to pay for a reasonable honorarium and incidental expenses on travel etc. to the members of this panel whose services would be obtained by NCPDR from time to time.

- (v) NCPCR shall provide training and orientation to all the members of the panel on JJ Act, method of Age inquiry, jail rules and discipline, and method of filling up the proforma etc.
- (vi) Such a panel may be revised as and when required by NCPCR.

While the jail visits are continuing by the NCPCR visitor's panel, NCPCR may ascertain that the jail authorities/Superintendent fulfil the duty cast on them by the High Court order to make available to the panel visitors of NCPCR the details of each inmate, as maintained by them, which shall include name, address, age on record, previous history of institutionalisation in jails, medical reports.

As per orders of the Hon'ble High Court of Delhi, NCPCR is to send reports of jail visits to the Member Secretary, DSLSA, Jail Authorities and concerned JJBs for further action.

JJBs shall conduct regular inspection of jails meant for adults to check if any child is lodged in such jails and take immediate measures for transfer of such child to Observation Home (Section 8(3) (m) of the JJ Act, 2015)

Suggestions for effective Monitoring: Structures and Processes

Setting up of a dedicated JJ Division support staff under the overall supervision of expert Members in the Commission. Rule 22 of the NCPCR Rules, 2006 allows NCPCR to engage a panel of consultants to assist the Commission in carrying out its functions, including tasks such as investigation and inquiry, setting up task forces and committees for research and analysis.

NCPCR has formulated monitoring mechanisms to collect details relating to setting up of infrastructural facilities and delivery system to monitor the implementation of provisions of the JJ Act, 2015. The Nodal Officers in the states are required to send monthly details to NCPCR. Monitoring formats are attached as **Annexure-VIII**.

Programme Components

- Undertake State/UT review exercise with governments to monitor the implementation of the JJ Act, 2015. Examine the functioning of all support services and statutory structures, review the availability and accessibility of non-institutional and institutional services for children, adequacy of staff and of infrastructure are in place, record challenges if any being faced. Provide technical support and make recommendations for improving performance.
- Partner with State Government and use NCPCR/SCPCR's networking strength to build linkages and coordination among all stakeholders.
- Monitor the State's awareness campaigns on child rights issues.

- Prepare Monitoring Guidelines with support of technical experts at the National/ State level to review all aspects of implementation of the JJ Act, 2015.
- Organise consultations with civil society groups at National, State and District level to be to receive their feedback on the implementation of Act to initiate appropriate intervention.
- Collaborate with the State and civil societies and undertake mass awareness and advocacy campaigns to prevent abuse of children and also ensure speedy response, support and compensation to child victims.
- Reach out to the State Legal Services Authorities to garner their support and cooperation for timely support in training of Police personnel and to disseminate information about the availability of legal aid and victim compensation.

Research, Data Analysis, Advocacy Efforts

- Build systems for exchange of information, data and knowledge sharing between NCPDR and SCPDRs which could contribute to national level reporting on implementation of the JJ Act, 2015.
- Bring out quarterly JJ Monitoring Bulletins to share observations of SCPDR and recommendations made after the field visits and ensure it is widely circulated to all departments of the government.
- Utilise research output to influence policy and seek amendments in Act where found necessary.

Judicial Oversight

The Hon'ble Supreme Court has in August 2013 set up a one-man JJ Committee to coordinate with the High Courts and maintain a closer follow-up on the implementation of the JJ Act, 2000, as amended in 2006. The judicial oversight is to continue for the JJ Act, 2015 as it replaces the repealed JJ Act of 2000 and its amendment in 2006 and 2011.

The Protection of Children from Sexual Offences Act, 2012

A study by the MWCD titled, 'Study on Child Abuse: India 2007', brought to light the extent and magnitude of child abuse, especially high levels of sexual abuse of children by persons known to them, which seldom gets reported, or when reported, is often not believed. The Protection of Children from Sexual Offences (POCSO) Act 2012 has been one of its outcomes. It was formulated to effectively address the heinous crimes of sexual abuse and sexual exploitation of children, keeping in view the objectives of Article 15 and Article 39 of the Constitution of India and to conform

with provisions in the UNCRC. The law addresses various forms of child sexual abuse against both boys and girls below the age of 18 years, makes reporting mandatory, provides for support persons and experts to assist the victims, establishes child-friendly procedures and mechanisms such as Special Courts to try such cases and follow victim protection measures in the course of trial, creates a presumption of guilt against the accused unless the contrary is proved by the accused, and provides for rehabilitation of the victims through immediate relief assistance and compensation, irrespective of the outcome of the trial.

Monitoring mechanisms within the POCSO Act

Keeping in mind the vulnerability of child victims and their inability to report and deal with the criminal justice system, this Act lays down the responsibilities of multiple stakeholders to ease and facilitate children's access to justice, including receiving timely compensation. The various stakeholders include the Police, the CWC, Prosecution and the Judiciary (in the form of appointment of Special Prosecutors and trial by Special Courts), the DCPUs and the State governments, doctors and hospitals, schools and institutions housing children, the hotel industry, photographers and media, and Civil Society Organisations, including support persons.

Monitoring Role of NCPDR/SCDRs

- Under Section 44 of the POCSO Act and Rule 6 of the POCSO Rules, NCPDR and SCDRs have been vested with the responsibility of monitoring the implementation of the provisions of the POCSO Act. This would include monitoring the designation of Special Courts at the district level, appointment of Special Public Prosecutors to these courts, setting up of SJPU, formulation of guidelines by the State for NGOs, health professionals and experts associated with the pre-trial and trial stage to assist the victims and monitoring the application of these guidelines. It would also include monitoring the designing and implementation of modules for training police personnel for the effective discharge of their functions under the Act. It also calls for monitoring and supporting the dissemination of information relating to the provisions of the Act by Central and State governments as the case may be through media, including the television, radio and print media at regular intervals, so as to create greater awareness among the general public, children as well as their parents and guardians.
- While inquiring into matters relating to an offence under the Act, the NCPDR and SCDRs are to utilise the powers of a civil court available to them under Section 14 of the CPDR Act and can also forward a case to the concerned

magistrate having jurisdiction to try it.

- NCPCR or SCPCR, as the case may be, if necessary, under Rule 6 (2) of the POCSO Rules, 2012 can call for a report on any specific case of child sexual abuse falling within the jurisdiction of a CWC. Post-inquiry, they can, under Section 15 of the CPC Act, recommend to the government to initiate proceedings for prosecution, recommend interim relief, or make any other recommendation to effectively redress the matter. They can also approach the High Court or Supreme Court for orders, directions, or writs.
- The NCPCR or the SCPCR, as the case may be, are to collect and assess information and data on their own or from the relevant agencies regarding reported cases of sexual abuse and their disposal under the POCSO Act and report the status of implementation of the POCSO Act in its Annual report.
- Information and data collection by the NCPCR/SCPCR need not be restricted to number of cases and their disposal. In fact Rule 6 (3) of the POCSO Rules specifically mentions collection of data and information on whether or not the procedures and timelines as laid down in the Act for recording the testimony of the victim child and completion of trial were followed, what arrangements were made for the care and protection of the victims at all stages of the case, beginning with the police station, medical examination, recording of statement of the child under Section 164 CrPC, production before the CWC and provision of support persons, interpreters/translators/special educators where needed, trial in the court and witness protection measures pre-trial, during trial and post-trial if required, interim and final compensation.
- A format has been developed by the NCPCR to monitor the implementation of the POCSO Act in the states. The Nodal Officers in the States are required to fill the format annexed at **Annexure-IX** and send it to NCPCR. It will be important to ensure that filled formats are regularly received from the states, and reminders are sent where required. A report on the information received or not received from the States may be included in the Annual Report of the Commission.

Given the mandate under POCSO Act, NCPCR has already initiated the following activities:

1. Follow-up with States/UTs on implementation status of the POCSO Act;
2. Follow-up with States/UTs on implementation of victim compensation schemes;
3. Information sought from State/UT Police through Questionnaire on cases booked under POCSO Act and cases being reported to district CWCs, as required under Section 19(6) of POCSO Act;
4. Questionnaire administered to State/UT Secretaries of WCD/Social Welfare/Social Defense seeking details of cases received by CWCs under the POCSO Act;
5. Circulation of the following basic informative documents among SCPCR:
 - (a) Advisory to Police
 - (b) Child Friendly Procedures for implementing POCSO Act, 2012
 - (c) Child Victim Charter
 - (d) Pamphlet on POCSO
 - (e) Guidelines for responding to child sexual abuse (CSA) Complaints
6. Preparation of Guidelines with Lawyers Collective and UNICEF:
 - (a) Guidelines for Police,
 - (b) Guidelines for Special Courts,
 - (c) Guidelines for Special Prosecutors,
 - (d) Guidelines for CWCs, and
 - (e) Guidelines for Health professionals.
7. Preparation of IEC material;
8. Review of IEC material for preventing child sexual abuse prepared by State/UT and NGOs initiated to identify best practices and to disseminate same among other States/UTs.

Source: www.ncpcr.gov.in

NCPCR Guidelines for Monitoring the Implementation of POCSO Act by Various Stakeholders³

- To take forward the onerous responsibility of monitoring the implementation of the POCSO Act 2012, monitoring guidelines for the Police, Special Courts, and Special Prosecutors have been prepared by Lawyers Collective Women's Rights Initiative as a technical partner for NCPCR with support from UNICEF in 2013.
- In order to conduct this exercise, NCPCR or SCPCRs are mandated to systematise the process of data collection by compiling information from the

implementing agencies functioning under the Act. Questionnaires, which correspond with the duties and statutory obligations of the agencies, can be used to collect analyses and evaluate data.

Recommendations for Monitoring: Structures and Processes

NCPCR/SCPCRs could set up a dedicated POCSO monitoring unit with the required number of personnel which could facilitate knowledge collection and sharing between NCPCR and SCPCRs and contribute to national level reporting on implementation of the POCSO Act.

The Model POCSO Guidelines, 2013 developed by the MWCD under Section 39 of the POCSO Act require wide publicity and dissemination and NCPCR and SCPCRs could play a major role in doing so. These guidelines are 'aimed at various professionals involved in providing services to the child and other affected persons including his/her family. Their objective is to foster better response mechanisms involving coordination amongst these professionals, so as to result in the evolution of a multi-sectoral, multi-disciplinary approach that will go a long way in achieving the objectives of the POCSO Act, 2012.'⁴

The Delhi High Court in *Anant Kumar Asthana vs. Union of India and others* [WP (Civil) No 787 of 2012], vide order dated 8th February, 2012 constituted a Committee comprising representatives of UOI, Govt. of NCT of Delhi, NGOs working for welfare of children, representatives of media etc. to deliberate upon the guidelines to be formulated to regulate media reporting and disclosure of details relating to children and to submit a report. The NCPCR was appointed as the Convenor of the said Committee. Vide its order dated 5 December 2012, the Court laid down the minimum parameters of responsibility for the media while reporting on children and issued guidelines to ensure that their right to privacy and confidentiality remain secured and protected. As per this order, a clear and specific responsibility has been cast on the NCPCR and SCPCRs for monitoring the implementation and compliance of these guidelines, in addition to compliance of other applicable laws, rules, regulations and guidelines by concerned persons and file a report in this regard in the Delhi High Court, on a yearly basis. A copy of the Guidelines is annexed at **Annexure-X**.

In addition, Guidelines have also been developed for hospitals, courts, CWCs and JJBs to ensure that in no event the privacy and confidentiality of a child brought before these institutions and bodies is violated. In its order dated, 05.11.2014, the High Court approved these guidelines as framed by the Committee and directed their implementation with immediate effect. These are annexed at **Annexure-XI**. As per these guidelines, every hospital is supposed to have an Inquiry Committee to inquire

into lapses on account of breach of privacy and confidentiality of a children examined or treated at such hospital. A copy of proceedings of Inquiry Committee, copy of complaint, findings along with action taken report are to be submitted to SCPCR or NCPCR where SCPCR does not exist, within one week from the implementation of Inquiry Committee's recommendations. The concerned Commission must record its satisfaction on the inquiry and if not satisfied, it is required to take cognizance and initiate its own inquiry as per provisions of the Commission of Protection of Child Rights Act, 2005.

Even though these guidelines have been framed in keeping with Section 21 of the erstwhile JJ Act of 2000 (as amended in 2006 and 2011), they will continue to apply and hold good even under the new JJ Act of 2015, since similar provisions are laid down in the new law too under Section 3 (xi) containing the 'Principle of right to privacy and confidentiality' and Section 74, which prohibits disclosure of identity of children in any form of media or communication, unless permitted by the CWC or the JJB for reasons recorded in writing. Further, Rule 19 (21) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 notified in the official gazette on 21 September 2016, require all orders passed by the Committee in respect of a child in need of care and protection to be uploaded on the designated portal with due regard to the confidentiality and privacy of the child.

Complaint Management

The POCSO e-Box launched on 26 August 2016 by Smt. Maneka Sanjay Gandhi, Minister, MWCD, is a major initiative by NCPCR. The POCSO e-Box was launched on the home page of NCPCR's website to facilitate children to report cases of sexual abuse online directly to the Commission. The complaints may be received through: (i) Online POCSO e-Box; or through (ii) POCSO e-mail⁵ (phone and SMS at the dedicated cell No. 9868235077).

Figure 3.1 **POCSO e-Box**



After the users select a complaint category, fill their name or e-mail address and mobile number, describe the incident in the box provided and click on the submit button to register the complaint, the complaint will be attended by the NCPCR officials. Complaints received through online POCSO e-Box/e-mail/SMS are under the supervision of a Senior Consultant in-charge of the POCSO Act.

The concerned officials are required to maintain a log book of complaints on daily basis both manually in a Register as well as on computer (excel sheet).

There is provision for counselling and legal advice to the victims. The advice/gist of conversation with the victims is to be recorded in the log book and submitted to the concerned Member for his consideration.

In addition to such an elaborate procedure for addressing complaints the following measures may be taken to ensure efficacy in complaint management and redress:

- All complaints relating to sexual abuse of children pending with CMS should be segregated, status determined and a fast track approach taken to redress and dispose the complaints with the support of legal experts temporarily hired to assist with this exercise.
- Where a case has been taken up by the CWC, report to be called for from the CWC seeking a status report with regard to medical treatment, rehabilitation, counselling and compensation provided to child victim.
- Quarterly review of complaints to be undertaken, categorised according to nature of complaints, analysed and action to be initiated in pending cases to dispose individually or undertake bunch disposal. Analysed data to be interpreted and recommendations made for compliance with provisions under the Act.
- Refer complaints to State Legal Services Authority for assistance in providing legal and para-legal aid to the victim and family.
- Where an SCPCR is functional, sexual abuse complaint with NCPCR to be transferred to the SCPCR for disposal as jurisdictional proximity would facilitate more effective management of the complaint. Where a complaint covers two or more States/UTs, NCPCR would continue to handle it with support of the respective SCPCRs.

Programme Component

- Review visits and meetings with State/UT governments and field visits could be undertaken to gauge measures taken to implement POCSO Act. Alternatively, e-conference with State/UT governments could be initiated for the same purpose based on urgency of the situation.

- Consultations with civil society groups at National, State and District level to be organised to receive their feedback on the implementation of Act which could lead to appropriate intervention.
- Networking and awareness programme on the POCSO Act with all stakeholders in the government and civil society in partnership with NGOs, or outsourced to them. Social media and other media channels such as radio and TV spots, interviews, articles in print media etc. may be organised.
- Reaching out to the State Legal Services Authorities to garner their support and cooperation in timely support to victim for compensation and legal aid.

Research, Data Analysis, Advocacy Efforts

- Administering questionnaires which correspond with the duties and statutory obligations of the various agencies listed in the Act on a quarterly basis and analysing data collected to gauge the effectiveness, efficiency and impact of measures taken to implement the Act. Sharing the report as a quarterly POCSO Bulletin with all stakeholders and also releasing it to the media.
- Analyse access of victims to compensation schemes while highlighting the lacunae in providing immediate relief (soon after filing FIR) to child victims of abuse.
- Utilise research output to influence policy and seek amendments in Act where found necessary in the best interests of child victims of abuse.
- Collaborate with the State and civil society organisations and groups to undertake mass awareness and advocacy campaign to prevent abuse of children and also ensure speedy response, support and compensation to child victims.

The Right of Children to Free and Compulsory Education Act, 2009

The Right of Children to Free and Compulsory Education Act (RTE), 2009 guarantees the right to education as a fundamental right to every child aged between 6 and 14 years. This Act follows the 86th Amendment to the Constitution of India, which moved elementary education from the list of Directive Principles to the list of Fundamental Rights, thus making it legally the State's duty to ensure that every child is provided free and compulsory elementary education.

Commissions for the Protection of Child Rights have been given a pivotal monitoring responsibility under the RTE Act which can be seen as complementing and strengthening the State's performance to create an education system that is equitable, inclusive and relevant to local circumstances to realise the right to education for all children. The States adopted the Model Rules covering provisions

in the Act and Model Rules as comprehensive legislation in different years (see **Annexure-XIII**).

Monitoring of the RTE by the Commissions

Under Section 31 of the RTE Act, the National Commission for Protection of Child Rights (NCPCR) and State Commission for Protection of Child Rights (SCPCR) have been assigned the following functions:

- (a) *Examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation*

Monitoring means a systemic review of the implementation of a policy or law, whether the benefits of the policy/law are reaching to the intended beneficiaries. There are different mechanisms in place for monitoring of a given policy/law. For instance, through building links with local level authorities, capacity building, awareness generation. However, a fundamental requisite to fulfil the functions and suggest targeted recommendations, a reliable, authenticate data is required, in absence of which the effective monitoring and review is not feasible.

Grievance Redressal Mechanism

Under Section 31 of the RTE Act, the National Commission for Protection of Child Rights (NCPCR) and State Commission for Protection of Child Rights (SCPCR) have been assigned the following functions:

- (a) *Inquire into complaints relating to child's right to free and compulsory education*
- (b) *Take necessary steps as provided under Sections 15 and 24 of the Commissions for Protection of Child Rights Act.'*

The said Commissions shall, while inquiring into any matters relating to child's rights to free and compulsory education have the same powers as assigned to them u/s 14 and 24 of the CPCR Act, 2005.

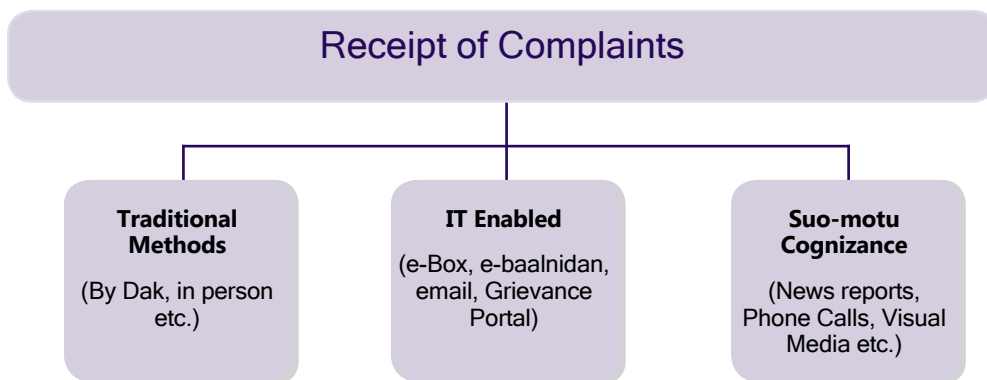
Procedure for Redressal of Grievances (u/s 32 of RTE Act, 2009)

1. Notwithstanding anything contained in Section 31, any person having any grievance relating to the right of a child under this Act may make a written complaint to the local authority having jurisdiction.
2. After receiving the complaint under sub-section (1), the local authority shall decide the matter within a period of three months, after affording a reasonable opportunity of being heard to the parties concerned.

3. Any person aggrieved by the decision of the local authority may refer an appeal to the State Commission for the Protection of Child Rights or the authority prescribed under sub-section (3) of Section 31, as the case may be.
4. The appeal referred under sub-section (3) shall be decided by the State Commission for the Protection of Child Rights or the authority prescribed under sub-section (3) of Section 31, as the case may be, as provided under Clause (c) of sub-section (1) of Section 31.

Important Steps in Handling of Complaints

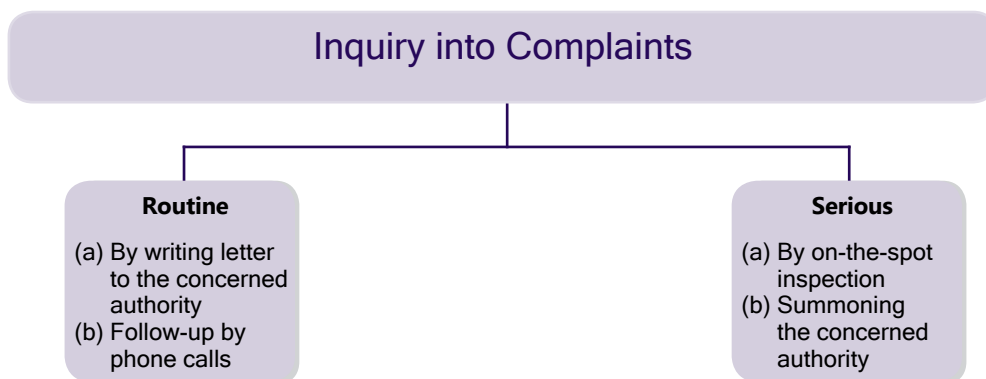
The following steps may be taken in handling of the complaints:



Management Information System (MIS) of Complaints

1. Complaint is given a Diary number
2. Complaint is analysed by concerned subject experts
3. Report is called from concerned authorities by letter. In urgent cases, authorities are contacted over phone.
4. Action Taken Report (ATR) is analysed when received from authorities.
5. If the ATR is found satisfactory, it is sent to the complainant for his/her comments.
6. If the complainant does not respond to the Commission's letter, the case is closed with the approval of competent authority.
7. As per Section 15 of CPCRA Act, 2005:
 - (i) If the inquiry discloses the Commission of violation of child rights of a serious nature or contravention of provision of any law for the time being in force, it may recommend to the concerned government or authority to initiate proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;

- (ii) Approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;
- (iii) Recommend to the concerned government or authority for the grant of such interim relief to the victim or the members of his family as the Commission may consider necessary.



Recommendations by NCPCR to various Stakeholders

1. To Chief Ministers of all States/UTs and Ministry of Panchayati Raj, Central Advisory Board of Education (CABE) 'to amend electoral rules of Urban Local Bodies and PRIs to make it mandatory for every candidate, whose children/wards are in the school going age group of 6-14 years, and who want to contest election should obtain an affidavit duly countersigned by the concerned school principal that her/his ward/s are enrolled in schools and regular in attending schools. Failure to comply with the said clause, the applicants' candidature shall be treated cancelled/nullified and s/he shall be considered disqualified to contest the elections.'
2. Recommendations on re-engaging Out of School Children (OoSC) (**Annexure-I**) to all SCPCRs and other Stakeholders viz. CABE Sub-Committee Members, Department of Education of various States/UTs, Ministries viz. Women and Child Development (MWCD), Human Resource Development (MHRD), Labor and Employment (MoL&E), Tribal Affairs (MoTA), Social Justice and Empowerment (MoSJ&E), Minority Affairs (MoMA), National Council of Educational Research and Training (NCERT) and State Commission for Protection of Child Rights (SCPCRs).
3. To Chief Secretaries of all States/UTs for including children of such families who lost their earning member under disadvantaged category as per Section 2(d) and 2(e) of the RTE Act, 2009. It was also recommended to extend this provision to children of the deceased soldiers of defence forces of the country.

4. Endorsing the request made by a school in Bihar to exempt their children from ongoing summative assessment examination, NCPCR recommended CBSE to exempt children of martyred soldiers studying in schools from the ongoing exams.
5. Recommendations to the Principal Secretaries (School Education/Education) of all States/UTs outlining measures for reducing the weight of school bags.
6. Recommendations to MHRD on New Education Policy (NEP) based on four Regional Consultations in association with SCPCRs (Available on NCPCR website).
7. Recommendations to MHRD to ensure the Education of children of the Farmers affected by Rain and Hailstorm studying in private schools by reimbursing the fee and other education entitlements; providing benefit u/s 12 (2); for those farmers who have suffered loss of more than 50 per cent crops; and the benefits should be in addition to compensation given to the farmers for crop damage.
8. Recommendation to CBSE, Kendriya Vidyalaya Sangathan, Navodaya Vidyalaya Samiti, CISCE to conduct verification of school staff and the newly selected candidates must provide a signed affidavit that they have not been accused of offence under POCSO Act, 2012 and Juvenile Justice (Care and Protection) Act.
9. Recommendation to MHRD to include safety and security as separate theme in NEP.
10. Recommendation to MWCD towards ensuring smooth transition from pre-primary to primary education so that children in pre-primary education after attaining 6 years of age do not drop out and become a part of primary education system..
11. Recommendation to National Council for Teacher Education (NCTE) to include child rights as a curriculum course under the broader curricular areas in all teacher training courses and also notify all universities to include a section in the teacher training curriculum based on those guidelines.
12. Recommendation to Principal Secretaries of all States/UTs to ensure that all schools follow FSSAI guidelines to promote healthy lifestyle, good health, physical fitness, and reduce risk of disease.
13. Recommendation to Chief Secretaries and SCPCRs of all States/UTs for effective implementation of scheme SABLA.
14. Recommendation to Law Commission of India, to form Uniform Civil Code for elementary education of children in India.
15. Recommendation to all State Education Boards, CBSE, Education Departments of all states and SCPCRs to spread awareness regarding e-Box – an easy and direct medium for reporting any case of sexual assault under Protection of Children from Sexual Offences (POCSO) Act, 2012 – in schools.

16. Recommendations on the agenda items laid down for 64th Central Advisory Board of Education. Same were also sent to MHRD.

Additional Functions

Section 13.1(k)

Such other functions as it may consider necessary for the promotion of child rights and any other matter incidental to the above function

Commissions may undertake work on other issues in connection to their mandate for promoting children's rights, for instance:

- Promoting Child Participation
- Promoting Alternate Care Services for Children that is not an exhaustive list but indicates aspects for work by the Commissions. Other emerging issues may be incorporated.

References

1. <http://www.ncpcr.gov.in/index1.php?lang=1&level=0&linkid=14&lid=261>
2. http://icds-wcd.nic.in/icpsmon/pdf/icps/final_icps.pdf
3. <http://www.ncpcr.gov.in/index1.php?lang=1&level=0&linkid=14&lid=261>
4. MWCD, Model Guidelines under Section 39 of the POCSO Act, 2012, Guidelines for the Use of Professionals and Experts under the POCSO Act, 2012, September 2013, Chapter 1, page 7.
5. pocsoebox-ncpcr@gov.in

ISSUE BASED INTERVENTIONS

ISSUE BASED INTERVENTIONS

Introduction

The Commissions for Protection of Child Rights have to deal with varied issues related to child rights in the course of their work. Many of these have been specifically mentioned in the CPCRA Act, 2005. This chapter provides a framework for examining specific issue based interventions. The suggestions in the section on scope for Commission's intervention are notional and not exhaustive. These are meant to guide the initial actions by the Commission and its Members, who can then build on these through their experience and interactions with stakeholders and experts. This chapter looks at key issues related to child rights and the laws associated with them.

Child Marriage

The legal age of marriage in India for girls is 18 years and for boys is 21 years. Any marriage solemnised before this legal minimum age is 'child marriage'.¹ According to the law, this is a criminal offence punishable with imprisonment of two years and a fine of up to one lakh rupees.²

While child marriage affects both boys and girls, traditionally the attitude of society has been to get a girl married as early as possible due to various social and economic factors. Less dowry is said to be demanded when the bride is younger, tempting parents to get their daughters married well under 18 years of age, though giving or receiving dowry is a crime under the Dowry Prohibition Act, 1961. Denying the right to education, failing to provide care and protection to minor girls and compromising on their safety from sexual violence in early marriages are blatant child rights violations and need to be stopped.

Related Policies and Laws

International Laws

- Article 16(2) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) lays down that 'the betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.
- Articles 19 and 34 of the UN Convention on the Rights of the Child (UNCRC) require the child to be protected from all forms of physical or mental violence, neglect, exploitation and abuse, including sexual abuse.

- Article 16 of the Universal Declaration of Human Rights (UDHR) recognises the right of marriage and family only for ‘men and women of full age’ and requires that ‘marriages shall be entered into only with the free and full consent of the intending spouses’. The same is reiterated in Article 23 of the International Covenant on Civil and Political Rights (ICCPR) and Article 10 of the International Covenant on Economic Social and Cultural Rights (ICESCR).

National Laws

Under the **Prohibition of Child Marriage Act, 2006 (PCMA)**,³ promoting, permitting or participating in child marriages are all punishable.⁴ Child Marriage Prohibition Officers have been appointed to deal with cases of child marriage.⁵ Child marriages can be declared null and void at the option of the contracting parties;⁶ and the courts have the powers to issue injunction for prohibiting child marriages from taking place.⁷

A child marriage resulting from violation of the injunction orders prohibiting the child marriage, or as a result of kidnapping, sale, trafficking or taking a child away from her/his lawful guardian by enticement, force or use of deceitful means or, for the purpose of marriage is automatically null and void and a declaration in this regard can be obtained from the court (Sections 12 and 14 of PCMA).

Juvenile Justice (Care and Protection of Children) Act, 2015 recognises under Section 2(14) (xii) children at imminent risk of marriage before attaining the age of marriage as children in need of care and protection. It further makes cruelty to children, which causes mental and physical suffering, a cognizable offence under Section 75. Further, Section 84 of the JJ Act extends the protection under the kidnapping and abduction provisions in the IPC to all children below the age of 18 years.

National Policy for Children, 2013 has not explicitly referred to protection measures for child victims of marriage or those vulnerable to child marriage but adequately articulates the State’s responsibility to ensure every child’s right to education and protection until he/she attains adulthood, and specifically promises protection to all children from all forms of violence and abuse, harm, neglect, stigma, discrimination, deprivation, exploitation including sexual exploitation, abandonment, separation and abduction.

Related Schemes

Girl child protection schemes of some states, most of which are cash transfers, provide incentives for female child survival, birth registration, education of girls and prevention of child marriage.⁸

These include the Dhan Laxmi Scheme of Government of India, Ladli Scheme of Delhi, Lakshmi Yojana and Kanyadan schemes of Madhya Pradesh, Girl Child Protection Scheme in Andhra Pradesh, etc. The listing of schemes is not exhaustive and SCPCRs may want to identify schemes being implemented in their respective States/UTs.

Integrated Child Protection Scheme (ICPS) has laid out a vast array of programmes, strategies and plans to provide a protective cover for children including for those children who are victims of child marriage. A major thrust of ICPS is to strengthen the family capabilities to care for and protect the child.

Suggestions for Commissions' Intervention

- Take cognizance of reports of any violation or deprivation of child rights, including child marriage and act on complaints reported to the SCPCR (Section 24 of CPCR Act) or the NCPCR (Section 13 of CPCR Act).
- Advocate for States/UTs to come up with incentives for poor communities to delay the marriage of girls who are traditionally married as minors.
- Advocate for and monitor efforts of the states for special occasion alertness and prevention of child marriages, for instance during Akashya Teej festival.
- Recommend to the State to launch massive awareness programme nationally and locally using all forms of media in collaboration with development agencies on the adverse implications of child marriage. Monitor the efficacy of such interventions.
- Organise State and National Level multi-stakeholder consultations in collaboration with the State to deliberate upon the matter and recommend ways and means of improving statistics on child marriage.

Child Trafficking

Trafficking is a trade that exploits the vulnerability of human beings, especially women and children, in complete violation of their human rights, and makes them objects of financial transactions through the use of force and duress, whether for the purpose of sex, labour, slavery or servitude.⁹ Trafficking as a criminal activity is essentially gender neutral characterised by violence, loss of free will, exploitation, threat and coercion. In the case of children, the severity of rights violation is more pronounced due to the vulnerability of age. Poverty, deprivation and illiteracy are the breeding grounds for such a menace and involve middlemen or contractors alluring children with the promise of a better life to far off places, with false information being provided to their respective families. The after effects of trafficking are a life of abuse and confinement in inhuman work and exploitative conditions. One of the more serious manifestations of trafficking is sex trafficking of children of both genders.

Related Policies and Laws

International Laws

Article 39 of the UNCRC further requires all states parties to take appropriate measures to promote physical and psychological recovery and also social reintegration of a child victim of any form of neglect, exploitation, or abuse; in an environment which fosters the health, self-respect and dignity of the child.

India ratified the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention against Transnational Organised Crime* (popularly known as the Palermo Protocol) on 5 May 2011. In 2013, when the Criminal Law Amendment Act came into force through an Ordinance passed by the President of India, the definition of trafficking as laid down in this international protocol was adapted and found inclusion under Section 370 of the IPC.

Other international human rights instruments relating to trafficking that have been ratified by India include the following:

Table 4.1: International Human Rights Instruments Related To Trafficking Ratified By India

International Convention for the Suppression of the Traffic of the Women and Children, 1921	RATIFIED on 28 June 1922
Slavery Convention, 1926	RATIFIED in 1954
Supplementary Convention on the Abolition of Slavery, Slave Trade and Institutions and Practices of Slavery, 1956	RATIFIED on 23 June 1960
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1951	RATIFIED on 9 January 1953

National Laws

JJ Act, 2015: The crackdown on traffickers is included under Section 75 (cruelty to child), Section 76 (employment of child for begging), Section 77 (giving intoxicating liquor or narcotic drug or psychotropic substance to child), Section 78 (using a child for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance), Section 79 (exploitation of a child employee), Section 80 (illegal adoption), Section 81 (buying or selling a child for any purpose), Section 83 (recruitment or use of child by non-state militant groups) Section 84 (kidnapping or abduction of any child below the age of 18 years) and Section 85 (offences committed on disabled children). When such offences are committed on children with disability, the punishment doubles up. If the child is unaccompanied and in need of care and protection, then she/he be produced before the Child Welfare Committee (Section 31). On the other hand the Committee shall have the powers to restore any child in need of care and protection to his/her parent, guardian, fit person or fit institution, as the case may be [Section 37(b)(c)&(d)].

The Immoral Traffic (Prevention) Act, 1956 as amended in 1986: The Immoral Traffic (Prevention) Act, 1956 was enacted to combat trafficking and sexual exploitation for commercial purposes. The intent was to tackle the ever-growing menace of forced child prostitution by making consent to the act irrelevant. If any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years subject to other sub-sections.

The Criminal Law (Amendment) Act of 2013, CrPC and IPC: Section 370 and 370A inserted under the Indian Penal Code as a result of the Criminal Law Amendment, 2013 covers trafficking for various purposes such as physical exploitation, slavery, servitude, forced removal of organs and also includes sexual exploitation.

The Protection of Children from Sexual Offences (POCSO) Act, 2012: The Act covers trafficking for sexual purposes under the provision of abetment and it is gender neutral and covers all children below the age of 18 years.

The Prohibition of Child Marriage Act, 2006 (PCMA): is an Act to provide for the prohibition of solemnisation of child marriages and for matters connected therewith or incidental thereto. Under the PCMA, not all child marriages are voidable. Some have been declared null and void. These include a child marriage resulting from kidnapping of the child or taking the child away from her/his lawful guardian by enticement, force or use of deceitful means or, if a child is sold or trafficked for the purpose of marriage or is married to be sold or trafficked for some other purpose [Section 12 (c) of the Act].

Right of Children to Free and Compulsory Education 2009: Section 10 of the Act provides it is the duty of every parent and guardian to admit their children aged between 6 and 14 years at a neighbourhood school for pursuing elementary education and it is the prerogative of the government to ensure and monitor admission, attendance and completion of elementary education of every child. In *Budhadev Karmaskar vs. State of West Bengal* [Criminal Appeal No. 135 of 2010], the Supreme Court made suitable suggestions on prevention of trafficking and rehabilitation of sex workers including their children and gave advisories to State Governments to improve enforcement mechanisms to combat trafficking of women and children as well as setting up 225 Anti Human Trafficking Units (AHTUs) in as many districts across the country to combat trafficking, training more than 10,000 police personnel who handle the AHTUs.¹⁰

Bonded Labour System (Abolition) Act, 1976: The act is aimed to abolish any custom, tradition or contract by virtue of which a person or any member of his/her family is required to do any work/render service as bonded labour by making them void in an operative. The main emphasis is on children who are victims of abuse and exploitation due to employment in hazardous industries.

The National Policy for Children, 2013: Section 4.9 states that, 'The State shall protect all children from all forms of violence and abuse, harm, neglect, stigma, discrimination, exploitation including economic exploitation and sexual exploitation.'

Anti-Human Trafficking Units (AHTUs)¹¹ of the Police have been established in 28 states and five UTs and are 225 in number.¹² The main aim of these units

is to strengthen the law enforcement response against trafficking in India in a comprehensive manner by identifying areas and causes and profiling of victims.

Victim Compensation: Section 357A of the CrPC requires compensation to be provided for any physical or mental trauma caused to the child or for immediate rehabilitation of such a child, irrespective of the outcome of trial. The amount of compensation is to be determined by the Victim Compensation Schemes notified by the State Governments and Union Territory administrations. In cases booked under the POCSO Act, the Special Court established under the Act can determine the amount of interim as well as final compensation and need not confine itself to the victim compensation schemes. However, there is no uniformity in the victim compensation schemes.

Related Schemes

Integrated Child Protection Scheme provides for preventive, care, protection and rehabilitation services for vulnerable children such as children who are trafficked, or sexually exploited. A major thrust of ICPS is to strengthen the family capabilities to care for and protect the child.

Protocol for Pre-Rescue, Rescue and Post-Rescue Operations of Child Victims of Trafficking for Commercial Sexual Exploitation was formulated in 2005 by the Ministry of Women and Child Development (MWCD). This Protocol contains guidelines for State Governments and a strategy for rescue teams concerning pre-rescue, rescue and post-rescue operations and for rehabilitation of children, who are victims of trafficking for commercial sexual exploitation. The Protocol has been circulated to the State Governments and NGOs.

Standard Operating Procedures (SOPs): have been developed under the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution¹³ for the repatriation and reintegration of child victims of trafficking, in particular those from Bangladesh and Nepal.

The Ministry of Home Affairs (MHA) has set up a Nodal Cell to coordinate, network and provide feedback to the State Governments and develop inter-state protocol for rescue and repatriation of victims of trafficking,¹⁴ act as a focal point for communicating various decisions and follow up on action taken by the State Governments and interface with other Ministries and National Crime Record Bureau (NCRB) in the collation and dissemination of information. According to a PIB release dated 4th December 2012, 'all the States/UT administrations have nominated Anti Trafficking Nodal Officers who coordinate amongst themselves on inter-state trafficking cases. Anti-Trafficking nodal cells have also been created at district level headed by Superintendents of

Police. Coordination meetings are held with the State Anti-Trafficking Nodal Officers in MHA periodically. Comprehensive advisories have been issued to all States/UTs for preventing and combating crime of human trafficking.'

The Ministry of Home Affairs has sanctioned a Comprehensive Scheme 'Strengthening law enforcement response in India against Trafficking in Persons through Training and Capacity Building' wherein it is proposed to establish 330 AHTUs throughout the country and impart training to 10,000 police officers through Training of Trainers (TOTs) component.

The Bureau of Police Research and Development (BPR&D) has prepared a training manual on 'Human Trafficking – Handbook for Investigators' for sensitising police personnel and these handbooks are being used in the National, Regional and State Police Training Institutes. Ministry of Home Affairs (MHA, MWCD and UNICEF prepared draft protocol and SOP for dealing with cross border trafficking between India and Bangladesh to address the various issues relating to prevention of trafficking, victim identification and repatriation and make the process speedy and victim-friendly.

The MWCD is making efforts towards Public-Private Partnership (PPP) as part of its Corporate Social Responsibility (CSR) for prevention of trafficking and rehabilitation of victims, in collaboration with UNODC and IOM and has organised several workshops and consultations.

Ujjawala, a comprehensive scheme for prevention of trafficking and rescue, rehabilitation, re-integration and repatriation of victims of trafficking for commercial sexual exploitation was launched in December 2007 by the MWCD and is in operation.

Swadhar Greh is yet another scheme of MWCD providing a supportive institutional framework for women victims of difficult circumstances so that they could be rehabilitated economically and emotionally to lead their life with dignity and conviction.

Judicial Oversight

The Judicial Handbook on Combating Trafficking of Women and Children for Commercial Sexual Exploitation¹⁵ published by the MWCD, National Human Rights Commission and UNICEF, is a special module for sensitisation, training and orientation of judicial officials towards the causes of commercial sexual exploitation and the situation of women and child victims.

The Supreme Court of India, while dealing with the issue of use and exploitation of children in circuses in *Bachpan Bachao Andolan vs. Union of India & Others* [WP

(C) 51 of 2006] suggested a close interface and a coordinated effort between the NCPCR, the State Governments and the MWCD to achieve positive outcomes.

Suggestions for Commissions' Intervention

- Periodically review and monitor initiatives of the State related to the functioning of the Anti-Human Trafficking Units, Special Juvenile Police Units and State- and District-level Anti-Trafficking Squads/Units as the case may be towards combating child trafficking.
- Organise National, State and District review meetings relating to the monitoring efforts of the Task Force on combating trafficking at all levels of administration.
- Undertake fact finding missions on receipt of a complaint or through *suo motu* cognizance of a reported incident of child trafficking and bring its findings to the notice of the concerned authorities, including judiciary through legal intervention where necessary.
- Monitor rescue and rehabilitation of children trafficked against specific complaints that have been received or even taking *suo moto* action on the same.
- Formulate guidelines for combating child trafficking, through multi-stakeholder consultation including the victims of child trafficking, and, recommend that the State circulates it widely at all levels of administration and among civil society partners working in this field.
- Reinforce coordination among the various agencies and committees across different sectors and from the national to the provincial and district levels.
- Organise sensitisation workshops training programmes involving all the stakeholders under the Optional Protocol – ministries, schools, NGOs, judges, law enforcement and communities that work with children.
- Establish and implement laws and policies to tackle child sex tourism, strengthen protection of children in case of inter-country adoptions and rehabilitate child victims of prostitution and pornography.

Child Victims of Domestic Violence

Domestic violence or intimate partner violence is a pattern of abusive and coercive behaviours including physical, sexual and psychological attacks, as well as economic coercion used by adults or adolescents against their current or former intimate

partners. Examples of physical abuse include slapping, shaking, beating with fist or object, strangulation, burning, kicking and threats with a knife while sexual abuse includes coerced sex through threats or intimidation or through physical force, forcing unwanted sexual acts, forcing sex in front of others and forcing sex with others.

Research findings show that children exposed to violence at home are more likely to be victims of child abuse and may suffer a range of severe and lasting effects¹⁶ which may be manifested in difficulty in learning and having limited social skills, exhibiting violent, risky or delinquent behaviour, or suffering from depression or severe anxiety. Such children are denied their right to a safe and stable home environment.

Related Policies and Laws

International Laws

The UNCRC recognises the role of States in taking preventive measures through legislations and other measures to protect the child from all forms of violence while in the care of their parents.¹⁷

Article 2 sub-clause 2 of the UNCRC requires the States Parties to take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians or family members.

Article 19 of the UNCRC requires all signatory governments to take appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Article 39 of the UNCRC requires all States Parties to take appropriate measures to promote physical and psychological recovery and also the social reintegration of a child victim of any form of neglect, exploitation or abuse; torture or any form of cruel, inhuman or degrading treatment or punishment in an environment which fosters the health, self-respect and dignity of the child.

The Convention on Elimination of All forms of Discrimination against Women (CEDAW)¹⁸

Article 16 recognises that States shall take steps to eliminate discrimination against women relating to marriage and family relations and that in matters relating to children, the interests of the children will be paramount.

National Laws

Indian Penal Code: Victims of domestic violence including child brides can seek justice under these IPC provisions too. Section 498A of IPC deals with cruelty by a husband or his family towards a married woman. It also covers dowry-related harassment. Section 304B is applicable if a woman dies of 'unnatural causes' within seven years of marriage and has been harassed for dowry before her death. Section 306 should be invoked when a woman commits suicide because of dowry-related harassment. If a woman is judicially separated, her husband cannot have sexual intercourse with her without her consent. If he does, he can be prosecuted under section 376A of the IPC.

The Protection of Women from Domestic Violence Act, 2005 (DVA) provides remedies for women who are victims of domestic violence. It recognises children as victims of domestic violence as well. Section 3 of the Act defines domestic violence to include economic abuse where a woman or her children are deprived of household necessities and other financial resources. A woman who uses the DVA as recourse against her spouse for any violence meted out against her can also seek monetary relief not only for herself but also her children. The Act also provides for sole custody orders of children for the aggrieved woman once a complaint has been filed under the Act.

The JJ Act, 2015 provides for protection under Section 75 against mental and physical suffering caused to children by persons having actual charge of or control over such children and makes it a cognizable offence with punishment for a term which may extend to imprisonment for three years or with fine of one lakh rupees or both.

The National Policy for Children, 2013 recognises the safety and security of all children as integral to their well-being and that they must be protected from all forms of violence and harm in all settings including within their families and communities.

Related Schemes

Integrated Child Protection Scheme provides access to safe and secure environment for overall development of children in need of care and protection, including children in difficult circumstances, such as child victims of domestic violence.¹⁹

Suggestions for Commissions' Intervention

The Commissions can draw attention to the violations inflicted on children due to domestic violence by:

- Monitoring the efforts of the government to raise awareness about the impact of domestic violence on children through public education campaigns and efforts to challenge beliefs and customs that condone violence.
- Monitoring the efforts of law enforcement agencies to enforce provisions in the IPC and laws that criminalise domestic violence and protect its victims including children.
- Influencing the formulation of public policies and provisions in law such as in the JJ Act, 2015 to provide special protection and remedies for child victims of domestic abuse.
- Examining/analysing the implementation of laws that provide remedies for children experiencing domestic violence/abuse.
- Examining the State's monitoring of the implementation of the ICPS to ensure it is adequately funded and scaled-up so that the services under the scheme address the impact of violence in the home on children.

Child Pornography and Prostitution

Child pornography involves video recording or photographing and production of sexually explicit material with involvement of children. Various media are used to propagate child pornography and they could include photos, videos, films, video games, writings, magazines, cartoons, drawings, animation etc. thus resulting in exploitation and abuse of the child. The internet has resulted in a massive increase in the availability, accessibility and volume of child pornography.

Child prostitution is the exchange of sexual services of children for money. It is one of the most exploitative crimes against innocent children as they end up being trapped and violated in situations which may last long into adulthood. When children are trafficked, the majority of them are known to end up in prostitution as they are cheaper to acquire and there is greater profit in trafficking them. There are a number of activities related to child prostitution, including soliciting in a public place, kerb crawling, owning or managing a brothel, pimping and pandering, which are recognised as crimes.

Child victims of pornography and prostitution are known to suffer from untold physical assaults by their handlers and customers. The psychological effects on children exploited through prostitution are innumerable. Physical injuries include vaginal injuries and infection. They are at high risk of unwanted pregnancies, tuberculosis, and contracting sexually transmitted diseases such as HIV, syphilis and herpes, all of which could be fatal.

Related Policies and Laws

International Laws

India, having ratified the UNCRC and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography,²⁰ is under obligation to abide by Article 34 of the CRC and the provisions of the optional protocol.

National Laws

The Information Technology Act, 2000 as amended in 2008: Section 67B prescribes punishment for those involved in **publishing or transmitting of material depicting children in sexually explicit act, etc. in electronic form**. It states that

Whoever,-

- (a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct or
- (b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner or
- (c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource or
- (d) facilitates abusing children online or
- (e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with a fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees:

Provided that the provisions of Section 67, Section 67A and this section do not extend to any book, pamphlet, paper, writing, drawing, painting, representation or figure in electronic form-

- (i) The publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern; or
- (ii) which is kept or used for bonafide heritage or religious purposes

Explanation: For the purposes of this section, 'children' means a person who has not completed the age of 18 years.

The Immoral Traffic (Prevention) Act [ITPA] is a 1986 amendment of legislation passed in 1956 as a result of the signing by India of the International Convention for the Suppression of Trafficking in Persons and of the Exploitation of the Prostitution of Others, signed by India on 9 May 1950 and ratified on 9 January 1953.²¹ Stringent punishment is accorded under the Act for any person who lures or entices a child into prostitution or is also a client.

POCSO Act 2012 has punitive measures for use of children for pornographic purposes (first conviction five years, second conviction seven years and also fine). If a person using the child for pornographic purposes commits an offence under Sections 3, 5, 7, and 9 of POCSO Act, the punishment will be (i) ten years to life imprisonment and fine, (ii) rigorous imprisonment for life and fine, (iii) six to eight years' imprisonment and fine, (iv) eight to ten years' imprisonment and fine respectively. The Act mandates a very sensitive approach by the police, the prosecution and the judiciary towards child victims.

The Indian Penal Code covers sexual exploitation of minors by penalising procurement of minors for prostitution under **Section 366A**. Persons guilty of selling and buying of minors for prostitution are chargeable under **Sections 372** and **373**. Kidnapping a woman for illicit intercourse is punishable under **Section 366**. Trafficking a minor comes under **Section 370** that provides for stricter sentences for the same, the minimum imprisonment being a term of ten years which may extend up to life. Sale, etc., of obscene objects to young person is punishable with three to seven years of imprisonment with fine (Section 293).

JJ Act, 2015 under Section 75 imposes punishment for exploiting a juvenile or child in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering and shall be liable for imprisonment for up to three years and/or

fine of up to one lakh rupees. Under Section 81 of the JJ act, 2015, selling or buying a child for any purpose is punishable with rigorous imprisonment for a term which may extend to five years and also liable to fine of one lakh rupees.

National Policy for Children 2013 under Sections 4.9 and 4.11 commits to protect children from all forms of violence and abuse and harm, neglect, stigma, discrimination, sale or trafficking for any purpose or in any form, and pornography or any other activity that takes undue advantage of them, or harms their personhood or affects their development. Special protection measures are to be taken to secure the rights and entitlements of these children including their need for rehabilitation and reintegration.

Related Schemes

The Government of India had developed a National Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children in 1998 with the objective of mainstreaming and reintegrating women and child victims of commercial sexual exploitation into the community.

Integrated Child Protection Scheme provides access to safe and secure environment for overall development of children in need of care and protection, including children in difficult circumstances, such as children who are victims of sexual exploitation in any form whatsoever and also children of prostitutes.

Suggestions for Commissions' Intervention

- Inclusion of child pornography and child prostitution as child rights violations in the Complaint Management System of Children's Commissions and capacity building of personnel and Members as required to effectively deal with cases of sexual abuse and exploitation.
- Recommending the undertaking of awareness generation campaigns by the State which target functionaries of the State interfacing with children and parents on protection and prevention of such abuse of children and on laws dealing with child pornography and prostitution and monitor its performance.

- Recommending government's review of its internet policies and e-governance to block search engines with links to keywords explicitly dealing with child pornography to prevent the trade and production of such pornographic content on the internet.
- Setting up an Expert Group to review State response to violations of child rights through child pornography and child prostitution and come up with an Advisory to all State/UT governments to plug loopholes in practice.
- Seeking quarterly reports from the State on rehabilitation outcomes for victims of child pornography and child prostitution to promote their reintegration into the community.
- Advocating with MHA for availability of reliable data on child pornography by inclusion of this violation in formats prepared for data gathering by NCRB and SCRB through POLNET and other data sources.

Illegal Adoption and Sale of Children

Despite progress by the Indian society, the social evil of the sale of women and children still exists in some parts of the country. The sale of children, which may also involve abduction of babies and young children, is a serious concern. It calls for vigilance by both services and communities in locations and situations where children are unprotected. Illegal adoption of children and child marriages may perhaps be regarded as forms of sale of children.

Related Policies and Laws

International Laws

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography²² explicitly prohibits the sale of children and encourages States Parties to take appropriate measures to protect children in the criminal justice process and their rehabilitation.

Article 35 of the UNCRC recognises that States 'shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.'

National Laws

The Constitution of India specifically in Article 23 declares 'rights against exploitation' as a part of the fundamental rights guaranteed by the Constitution. The Supreme Court has reiterated this in several cases.

Indian Penal Code (IPC) Sections 372 and 373 criminalise selling, buying, letting on hire or taking on hire or other disposal or acquisition on disposal of minors. There can be several other purposes for which a child can be sold which may not fall within Sections 372 and 373 of the IPC and hence such kind of sale of children may not be penalised under the IPC though it is now penalised under the JJ Act of 2015. Instances of such other purposes may include adoption, marriage, begging, forced labour, organ trade, exploitation etc.

The JJ Act, 2015 provides for protection under Section 75 against cruelty to children who cause mental and physical suffering with punishment of imprisonment for a term which may extend to three years or a fine of one lakh rupees or with both. Under Section 81 of the JJ Act, 2015, selling or buying a child for any purpose is punishable with rigorous imprisonment for a term which may extend to five years and also liable to a fine of one lakh rupees. In addition, using a child for begging or economic exploitation or for selling drugs and psychotropic substances, or procuring a child illegally for adoption are all recognised as cognizable offences under Sections 76, 78, 79 and 80 of the JJ Act, 2015.

The Prohibition of Child Marriage Act, 2006 is an Act to provide for the prohibition of solemnisation of child marriages and for matters connected therewith or incidental thereto. Under the PCMA, not all child marriages are voidable. Some have been declared null and void. These include a child marriage resulting from kidnapping of the child or taking the child away from her/his lawful guardian by enticement, force or use of deceitful means or, if a child is sold or trafficked for the purpose of marriage or through marriage.

National Policy for Children under Section 4.9 and 4.11 commits to protecting children from all forms of violence and abuse and harm, neglect, stigma, discrimination, sale or trafficking for any purpose or in any form that takes undue advantage of them or harms their personhood or affects their development. Through this Policy, the Government commits to creating a caring and protective environment to reduce vulnerability of children; protecting them from all forms of abuse and exploitation; providing family and community-based care arrangements for children.

Related Schemes

Integrated Child Protection Scheme provides access to safe and secure environment for overall development of children in need of care and protection, including children in difficult circumstances and those vulnerable to be sold. It provides for family and institution based alternate care for such vulnerable children.

Central Adoption Resource Authority (CARA)²³ under the MWCD, GOI is mandated to monitor and regulate in-country and inter-country adoptions. CARA is designated as the Central Authority to deal with inter-country adoptions in accordance with the provisions of the Hague Convention on Inter-country Adoption, 1993, ratified by Government of India in 2003. CARA primarily deals with adoption of orphan, abandoned and surrendered children through its associated/recognised adoption agencies.

Schemes for Girls: Girl child protection schemes of some States, most of which are cash transfers, provide incentives for female child survival, birth registration, education of girl children and prevention of child marriage. These include:

Dhanalakshmi Scheme of Government of India, Ladli Scheme of Delhi, Ladli Lakshmi Yojana of Madhya Pradesh, Bhagyalakshmi Scheme of Karnataka, Balri Raksha Yojana in Punjab, Ladli Scheme of Haryana, Kanyadan scheme of Madhya Pradesh, Girl Child Protection Scheme in Andhra Pradesh etc. The listing of schemes is not all inclusive and SCPCRs may want to identify schemes being implemented in their respective States/UTs.

Suggestions for Commissions' Intervention

- Recommending to the State that adequate governance frameworks are put in place to prevent and combat illegal adoptions and seeking periodical monitoring reports.
- Formulating guidelines on illegal adoption of children.

Child Labour

Child labour is a phenomenon that India has been grappling with for a long time. Children are generally found employed in the unorganised sector, workshops, establishments, mines and in the service sector at times as domestic help, whether paid or unpaid. They are visible on the streets working as shoe-shine boys, rag-pickers and are even found begging. Most of the children are bonded into labour being pledged either by their parents for paltry sums of money or working to pay off inherited debts of their families. Children are known to drop out of school and accompany parents during

'distress seasonal migration' working alongside them in sugar cane harvesting, brick kilns, salt pans etc. They are found working as part time or full-time labour in agriculture which is perhaps the largest sector in which children are to be found working in.

Related Policies and Laws

International Laws

The UN Convention on the Rights of the Child: Article 32 (1) of the Convention: 'States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.'

India has made a declaration in Article 32 that it shall work progressively towards elimination of child labour.

Article 39 of the UNCRC requires all states parties to take 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 form of cruel, inhuman or degrading treatment or punishment in an environment which fosters the health, self-respect and dignity of the child.

National Laws

Constitution of India: Article 24 of the Constitution prohibits the employment of children in factories etc.

Article 39 (e) provides that the health and strength of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

Article 39 (f) makes it incumbent on the State to ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Factories Act, 1948: Section 67 of the Act prohibits employment of children below the age of 14 years in any factory. An adolescent between 14 and 18 years can be employed only if he/she obtains a certificate of fitness from an authorised medical doctor. A child between 14 to 18 years cannot be employed for more than 4½ hours per day.

Plantation Labour Act, 1951: Section 24 of the Act prohibits employment of children below the age of 12 years for the purpose of plantation labour.

Merchant Shipping Act, 1958: Section 109 of the Act prohibits engagement of children below the age of 14 years to work at sea in any capacity in any ship, except in a school or training ship, in accordance with the prescribed conditions; or in a ship in which all persons employed are members of one family; or in a home-trade ship of less than two hundred tons gross; or where the child is employed on nominal wages and is in the charge of his father or other adult near male relative.

Mines Act, 1952 (as amended in 1983): After the commencement of the Mines (Amendment) Act, 1983, no person below eighteen years of age shall be allowed to work in any mine or part thereof. It however allows apprentices and other trainees, not below sixteen years of age, to work, under proper supervision by the manager provided approval of a chief inspector or an inspector is obtained before they are allowed to work.

The Child Labour (Prohibition and Regulation) Amendment Act, 2016: This is the umbrella legislation dealing with child labour in the country. Enacted recently, the Act came into force on 1st September 2016. Section 3 of this Act has prohibited employment of children below the age of 14 years in all sectors, except where (a) the child helps his family or family enterprise after his school hours or during vacations, and such work is not a hazardous occupation or process as laid down in the Schedule; and (b) the child works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities other than the circus, subject to prescribed conditions and safety measures, and only if it does not affect the child's school education.

The Act further prohibits employment of adolescents aged between 14 and 18 in any of the hazardous occupations or processes set forth in the Schedule. The hazardous occupations and processes include mines, inflammable substances or explosives, and hazardous process as defined in clause (06) of the Factories Act, 1948.

Other legislations for regulating the practice of child labour: The Bonded Labour System Abolition Act, 1976; Contract Labour (Regulation and Abolition) Act, 1970; The Apprentices Act, 1961, Motor Transport Workers Act, 1961; Beedi and Cigar Workers (Conditions of Employment) Act, 1966, etc.

JJ Act, 2015: Notwithstanding anything contained in any law for the time being in force, under **Section 79 of the JJ Act, 2015**, whoever engages a child and keeps him in bondage for the purpose of employment or withholds his earnings or uses such earning for his own purposes shall be punishable with rigorous imprisonment for a term which may extend to five years and shall also be liable to a fine of one lakh rupees.

Explanation: For the purposes of this section, the term ‘employment’ shall also include selling goods and services, and entertainment in public places for economic gain.

The Supreme Court in the case of MC Mehta v. State of Tamil Nadu and Others, judgment dated 10/12/1996

The court appreciated the recommendations of the Advocates Committee set up under its directions to make a comprehensive report relating to the various aspects of the ‘unfortunate accident in one of the Sivakasi cracker factories’. One of the recommendations of the Committee provided for the establishment of a National Commission for children’s welfare to be set up to prepare a scheme for child labour abolition in a phased manner. Such a Commission should be answerable to the Supreme Court directly and should report to it at periodical intervals about the progress.

Delhi High Court’s Direction for NCPDR:²⁴ While disposing off five writ petitions, namely Court on its Own Motion vs. Government of NCT of Delhi [W.P.(C) 9767/2009], Save the Childhood Foundation vs. Union of India & Ors. [W.P.(CRL) 2069/2005], Q.I.C. & A.C. vs. Ministry of Labour & Employment & Anr. [W.P.(C) 15090/2006], All India Bhrashtachar Virodhi Morcha (Regd.) vs. Karol Bagh Bangiya Swaran Shilpi Samiti (Regd.) & Ors. [W.P.(C) 4125/2007], and Court on its Own Motion vs. State NCT of Delhi [W.P.(C) 4161/2008], the Delhi High recognised that children’s entitlement to a better future through education and not exploitation and also to special care and assistance because of their physical and mental immaturity.

The Court vide its order dated 24 September 2008, directed the National Commission for Protection of Child to formulate a detailed Action Plan for strict enforcement and implementation of CLPRA, 1986 and other related legislations. The Commission was also directed to suggest 20 measures regarding education, health and financial support to the rescued children, and measures for timely recovery and proper utilisation of funds collected under the Supreme Court’s direction in the aforesaid M.C. Mehta’s case. Accordingly, the National Commission, after holding consultation with various stakeholders and after conducting research and survey, submitted a Delhi Action Plan for Total Abolition of Child Labour to the Court, which was accepted by the Court on 15 July 2009 with direction to all concerned authorities for its immediate implementation.

The Action Plan is based on two strategies viz. ‘Area Based Approach’ for elimination of child labour, wherein all children in the age group of 6 to 14 years would be

covered whether they are in school or out-of-school, and an approach to be adopted in the context of migrant child labour involving a process of identification, rescue, repatriation and rehabilitation of child labour. The Delhi Action Plan provides detailed procedure to be adopted at the pre-rescue and actual rescue stage which includes (a) interim care and protection of the rescued children, (b) how investigation is to be conducted and charge sheet is to be prepared, (c) assessment and verification of child's background and intra-state as well as inter-state repatriation, (d) rehabilitation and social integration of the child labour as well as training and capacity building of duty bearers, and (e) role and responsibilities of various departments/authorities involved in these processes.

Protocol on Prevention, Rescue, Repatriation and Rehabilitation of Trafficked and Migrant Child Labour, 2008,²⁵ issued by Ministry of Labour and Employment, Government of India, lays down guidelines on actions to be taken by different departments of State Governments, police, children and women commissions, non-governmental organisations (NGOs) and other stakeholders to ensure smooth rescue, repatriation and rehabilitation of trafficked and migrant child labour.

The National Policy on Child Labour announced in 1987 emphasised the need for strict enforcement measures in areas of high child labour concentration. In order to translate the above policy into action, the Government of India initiated the National Child Labour Project Scheme (NCLP Scheme) in 1988 to rehabilitate working children, starting with 12 child labour endemic districts in the country, expanding to 227 districts.

National Policy for Children, 2013: The Policy enumerates special measures and affirmative action as required to diminish or eliminate conditions that violate children's rights and states that every child has the right to dignified life, free from exploitation. It also provides for out of school children such as those engaged in labour to be tracked, rescued, rehabilitated and have access to their right to education.

Related Schemes

Under the **National Child Labour Project**, working children are identified through child labour surveys, withdrawn from work and put into special remedial or bridge schools, so as to provide them with an enabling environment to join the mainstream education system.

Grants-in-Aid on Child Labour:²⁶ Funds under Grants-in-Aid Scheme are sanctioned directly to NGOs for elimination of Child Labour in districts not covered by the NCLP Scheme. Under the scheme, voluntary agencies are given financial assistance by

the Ministry of Labour on the recommendation of the State Government to the extent of 75 per cent of the project cost for the rehabilitation of working children.

Scheme for Welfare of Working Children in Need of Care and Protection:²⁷ This scheme provides of opportunities including non-formal education, vocational training, etc. to working children to facilitate their entry/re-entry into mainstream education in cases where they have either not attended any learning system or where for some reasons their education has been discontinued with a view to prevent their continued or future exploitation.

Revised Integrated Child Protection Scheme: The ICPS has been revised to focus its activities on children in need of care and protection such as child labour and will also provide preventive, statutory and care and rehabilitation services. The scheme would endeavour to bring services closer to vulnerable children and families for increased access. A major thrust of ICPS is to strengthen the family capabilities to care for and protect the child. The scheme provides for convergent action by key departments on all critical aspects of child protection for the 0-18 age group.

Suggestions for Commissions' Intervention

- The commission should focus on (a) strict enforcement of all the relevant laws, (b) defining for every child a path in school and for older children an appropriate education programme, (c) establishing the roles and co-ordination mechanisms and addressing all department/agencies/actors involved in within the community mobilisation and prevention processes and the child's withdrawal, rehabilitation, schooling and monitoring processes by the Central and State governments.
- Calling for monitoring reports from government on the following: Implementation of provisions in the JJ Act, 2015 following rescue operations of children in employment to ensure that they are child friendly, and all children are tracked till they are rehabilitated.
- Mainstreaming in education through NIOS and long term rehabilitation through Modular Employability Scheme (MES) of Ministry of Labour & Employment (MLE) in collaboration with the Department of Technical and Higher education. Follow-up of these children is essential to prevent relapse.
- District administration taking cognizance of complaints relating to employment and abuse/exploitation of children in high labour prone districts and filing of FIRs under Section 75 and 79 of the JJ Act, 2015.

Children in Street Situations

Children in street situations may be classified as (a) abandoned or orphan; (b) missing or run-away; (c) street connected children who spend most of their time on the streets fending for themselves but return home on a regular basis; and (d) street family children who live on the streets with their families.

Children living on the streets could be aged anywhere between 5 to 18 years. They sell flowers, newspapers and fruits on the street; work in eateries; beg; are rag-pickers; work in construction; and do small jobs such as playing in wedding bands, basket-making, household work, loading, polishing shoes, ironing, tailoring and selling scrap to earn enough to fend for themselves, entertain themselves and maybe spare some money for their families too.

Children living on the streets are most vulnerable to abuse, with sexual abuse, though hidden but widely prevalent among them. They also become victims of sexual abuse by non-street living adults and are prone to trafficking. Girls particularly are not safe on the streets. Most children are compelled to reside amidst sub-human living conditions while a sizeable number of children are becoming addicted to drugs, whitener, tobacco, polish and similar substances. Children living on the streets are also lured into employment at dhabas, eateries, homes, shops etc. and find themselves in exploitative situations from which they often cannot flee.

Related Policies and Laws

International Laws

Article 36 of the UNCRC casts an obligation on the States Parties to protect the child against all other forms of exploitation prejudicial to any aspect of the child's welfare.

Article 39 of the UNCRC requires all States Parties to take 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 form of cruel, inhuman or degrading treatment or punishment in an environment which fosters the health, self-respect and dignity of the child.

National Laws

JJ Act, 2015 and Model JJ Rules, 2016: These children are squarely within the purview of 'children in need of care and protection' as defined under Section 2(14) of the Act, and hence, are eligible for entitlements guaranteed thereunder. Section 40 (1) and 43 (2) of the Act specifically provides for restoration and protection of a child through open shelters, which are meant to function as a community based facility for children in need of residential support, on short term basis, with the objective of

protecting them from abuse or weaning them, or keeping them, away from a life on the streets. To ensure that standards of care and protection are met by such open shelters, the Act makes their registration mandatory under Section 43 (1) and as per Rule 22 of the Model JJ Rules, 2016.

Supreme Court Direction: The Supreme Court in *People's Union for Civil Liberties vs. Union of India & others*[Writ Petition (Civil) No 196 of 2001], time and again reiterated that the right to dignified shelters was a necessary component of the Right to Life under Article 21 of the Constitution of India. The National Report on the Status of Shelters for Urban Homeless, August, 2014 points out that, 'In pursuance of Supreme Court's directives on the matter and of the Presidential announcement in 2012, a National Scheme of Shelter for Urban Homeless was announced in September, 2013 and operational guidelines under NULM issued in December, 2013.'²⁸

Suppression of Immoral Traffic in Women and Girls Act, 1956 and Immoral Traffic (Prevention) Act (ITPA) 1986: Traffic in human beings and forced labour is punishable under these Acts.

POCSO Act, 2012: The Act covers four offences along with aggravated forms of the first two: (i) Penetrative sexual assault, (ii) Sexual assault, (iii) Sexual Harassment and (iv) Pornography and provides these children justice against such violations.

RTE Act, 2009: The Act makes it obligatory on the State to provide free education to children up to the age of 14 years and access to education for these children cannot be compromised.

National Policy for Children, 2013: The Policy enumerates a vibrant policy framework for catering to every aspect of the developmental needs of a child in need of care and protection.

The State commits to taking special protection measures to secure the rights and entitlements of children in need of special protection, characterised by their specific social, economic and geo-political situations, including their need for rehabilitation and reintegration.

Related Schemes

Revised Integrated Child Protection Scheme: This has been introduced to provide safe and secure environment for overall development of children in difficult circumstances. Under the Scheme, there is provision for setting up of 'Open Shelters' for children in need of care and protection, including the street children, in urban and semi-urban areas.

Mahatma Gandhi National Rural Employment Guarantee Act, 2005: This is a labour law that aims to ensure livelihood security in rural areas by providing at least 100 days of guaranteed wage employment in a financial year. Once it is fully accessed it can assure better outcomes for children in terms of change in labour pattern by reducing child labour and providing additional income opportunities for adults, which may lead to greater expenditure on children, including education, health and nutrition.

Suggestions for Commissions' Intervention

- Recommend that at the district level government undertakes close monitoring of protection measures for children living on the streets and furnishes monthly action taken reports to Commissions on these interventions under the leadership of District Magistrate.
- Mobilise involvement of the District Child Protection Units (DCPU) to finalise a concrete plan of action for intervention with individual care plans to mainstream children into formal education or skill training.
- Recommend that ICDS be extended to the street families and all migrant families and unaccompanied children, including access to Anganwadi Centres (AWCs) and Rajiv Gandhi Crèche facilities. For such children in street situation in the age group of 6 months to 6 years age appropriate meal, free of charge through the local Anganwadi should be provided so as to meet the nutritional standard specified in the said act.
- Information and public display of various provisions of government services and schemes and subsidies for various sections at the AWCs, community development centres and at public places to enable marginalised families to access them.
- Mainstreaming in education through NIOS and long term rehabilitation through Modular Employability Scheme (MES) of Ministry of Labour & employment [MLE] in collaboration with the Department of Technical and Higher education. Follow-up of these children is essential to prevent relapse.
- Public health facilities should reach out to street children and unaccompanied children for their health and injuries related issues. Special efforts should be made to reach out to children on the street through regular outreach and health camps at various locations where such children are found.

- A system of distribution of sanitary napkins to girls, awareness about reproductive health and sexuality along with regular check-up could be carried out in these health camps.
- Rehabilitation programmes must reach out to children addicted to substance abuse, found sexually active or victims of sexual abuse or children should be referred to Counselling centres for addiction and HIV related safe practices.
- Through Department of Health a separate and specialised a de-addiction treatment centre/ facilities for street children addicted to drugs, alcohol and substance abuse should be established in Government Hospital/Medical Colleges.
- Recommend for city municipalities/corporations to provide decent housing facilities and other amenities for migrant families with close access to schooling and protection services for their children to prevent their spilling on to the streets. Propose strictures against parents and families pushing children on to the streets to generate income.
- Awareness campaigns for rights and entitlements of street children.

Children in Need of Care and Protection (CNCP)

It is estimated that around 40 per cent of India's children are vulnerable or experiencing difficult circumstances and vulnerabilities such as fractured homes, violence, abuse, drug and substance abuse and poverty. These children are often illiterate, school dropouts and have no access to acquiring skills to sustain themselves. Consequently, they run the risk of being caught in the nexus of exploitation as child labour, street children, child trafficking, criminal activities such as theft, drug and substance abuse, participation in gang rapes, murder, etc.

India's Juvenile Justice Act is unique as much as it seeks to address care, protection and rehabilitations needs of both children in need of care and protection (CNCP) and those in conflict with the law (CICL). In fact, the law also allows children caught for petty offences to be treated as CNCP [Section 8 (3) (g) and Section 17 (2) of JJ Act, 2015 read with Rule 9 (3) and Rule 10 (1) (ii) of Model JJ Rules, 2016].

The new JJ Act of 2015 expands the definition of a CNCP to include children who are at risk of child marriage as well as children residing with people who violate any child protection laws or whose parents are unfit, and children affected by civil unrest.

Besides, orphaned, abandoned and surrendered children are also covered under the definition of CNCP with a clear procedure mandate provided for the Child Welfare Committees (CWCs) to carry out necessary inquiry to declare them as such. Street and working children, children found begging, children living under threat of sexual abuse and exploitation, trafficked children and mentally and physically challenged children with no support are also covered under this definition.

CWCs are the statutory mechanism to deal with CNCPs and have been entrusted with the powers of a Bench of First Class Judicial Magistrate.

The CWCs, after satisfying itself through an inquiry based on the Social Investigation report of a Child Welfare Officer and taking into account the child's wishes, may send a child into short-term or long-term institutional care for suitable rehabilitation, or it may restore the child to her/his family with directions for supervision, or place a child in foster care, or declare a child legally free for adoption, or make an order for individual or group sponsorship that takes care of the needs of a growing child. The Act also provides for aftercare for children after the age of 18 years, to help them reintegrate into society after being in long-term institutional care.

Related Policies and Laws

International Law

Article 3 of the UNCRC requires States Parties to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

National Laws

Constitution of India: Article 21 of the Constitution guarantees to all persons the right to life and states that no person shall be deprived of his life or personal liberty except according to procedure established by law.

Articles 15 (3), 39 (e) & (f), 45 & 47 of the Constitution impose on the State primary responsibility of ensuring that all the needs of children are met and their basic human rights are effectively protected.

- **JJ Act, 2015 and Model JJ Rules, 2016:** Section 2 (14) of the Act defines children in need of care and protection. The Act makes several provisions in so far as the care, protection, rehabilitation and reintegration of the child is concerned, including provision for short-term and long-term institutional care through institutions such as children's homes, open shelters and fit facilities

as well as non-institutional care measures like foster care, adoption, etc. It also recognises the need for aftercare for children released from long-term institutional care on attaining the age of 18 years. The Model JJ Rules of 2016 make elaboration provision for aftercare up to the age of 21 years, which includes helping children with pursuing vocational training or higher education, finding employment, supporting them with loans to set up their own business or enterprise, support through community group housing on a temporary basis and such other measures [Rule 25 (7) and 83 (4) (6)]. The Act makes registration of all Child Care Institutions (CCI) mandatory (Section 41 of the Act). When an institution ceases to be an institution registered under the Act or has not been granted provisional registration, the said institution shall be managed by the State Government or the children placed therein shall be transferred by the order of the Board or the Committee to some other institution, registered under sub-section (1) of Section 41 of the Act [Rule 21 (8) of Model JJ Rules].

To ensure minimum standards of care and protection, the Model JJ Rules, 2016 make elaborate provisions for management and monitoring of institutions besides laying down the standards to be followed by all CCIs in terms of physical infrastructure and accommodation, medical care, education and vocational training, children's participation in decisions concerning their life in the institution, roles and responsibilities of the person-in-charge of the institutions and other staff. In addition to the functions specified under the Commissions for Protection of Child Rights Act, 2005, the National Commission or the State Commissions for Protection of Child Rights are required to specifically monitor the implementation of the JJ Act [Section 109 of the Act and Rule 91 of Model JJ Rules, 2016], review of setting up of institutions created under the Act and generating awareness about the law as well as developing protocols for rehabilitation of children.

The Commissions for Protection of Child Rights Act, 2005: Section 13(1)(e) enumerates that the National and State Commissions constituted under the Act shall look into the matters relating to children in need of care and protection including children in distress, marginalised and disadvantaged children, children in conflict with law, juveniles, children without family and children of prisoners and recommend appropriate remedial measures.

RTE Act, 2009: The Act makes it obligatory on the State to provide free education to children up to the age of 14 years which would also, include children in need of care and protection residing in CCIs or placed in foster care.

Miscellaneous Legislations: There are several other legislations governing specific aspects of vulnerable children in this category: Guardians and Wards Act, 1890 (as amended in 2010); Hindu Adoption and Maintenance Act, 1956 (as amended in 2010);

Child Labour (Prohibition and Regulation) Amendment Act, 2016; Protection of Children from Sexual Offences Act, 2012; Immoral Traffic (Prevention) Act, 1956 (as amended in 1978 and 1986); Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1987; Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 (as amended in 2003); the Pre-natal Diagnostic Technique Regulation, Prevention and Misuse) Act, 1994 and its amendment in 2003; Prohibition of Child Marriage Act, 2006; the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

National Policy for Children, 2013: The Policy enumerates a vibrant policy framework for catering to every aspect of the developmental needs of a child in need of care and protection. It states that every child has equal right to learning, knowledge and education. The State recognises the responsibility to secure this right for every child, with due regard for special needs through access, provision and promotion of required environment, information, infrastructure, services and support towards the development of the child's fullest potential.

Related Schemes

Scheme for Welfare of Working Children in Need of Care and Protection:²⁹ Provision of opportunities including non-formal education, vocational training, etc., for working children to facilitate their entry/re-entry into mainstream education in cases where they have either not attended any learning system or where for some reasons their education has been discontinued with a view to prevent their continued and future exploitation.

Revised Integrated Child Protection Scheme: It strives to focus on children in need of care and protection who come in contact with the system either as victim or as a witness or due to any other circumstance. The ICPS is to provide preventive, statutory and care and rehabilitation services to all vulnerable children and endeavour to bring services closer to vulnerable children and families for increased access. The scheme would pursue a conscious shift to family-based care including sponsorship, kinship care, foster care and adoption. Periodic review of children in institutional care for restoration to families would also be undertaken.

Child line (1098) is India's first 24 hours, free emergency service to children in need of care and protection, especially, the more vulnerable sections. This includes street children and youth living alone on the streets, child labourers working in the unorganised and organised sectors, including child domestic helps, children affected by physical/sexual/emotional abuse in family, schools or institutions, children who need emotional support and guidance, children of commercial sex workers, child victims of the flesh

trade, victims of child trafficking, children abandoned by parents or guardians, missing children, run away children, children who are victims of substance abuse, differently-abled children, children in conflict with the law, children in institutions, mentally challenged children, HIV/AIDS infected and affected children, children affected by conflict and disaster, refugee children, children whose families are in crises. Recently, Indian Railways have introduced the childline no. 1098 on each of Rail Neer mineral water bottles which are served in Indian Railways for public awareness.

NCPCR POSCSO e-Box: launched on 26 August 2016 at the portal of NCPCR website for easy and direct reporting of cases of child sexual abuse by children to the Commission.

Suggestions for Commissions' Intervention

- Monitoring the implementation of the JJ Act, 2015 and ICPS by the government to ensure it raises the standard of services extended to children entering the system and builds capacities for child protection functionaries while focusing on family and community based interventions such as counselling, family assistance, educational sponsorships, foster care and inclusion of needs of migrant and single parent.
- Recommending to the State to fill the gaps in infrastructure, personnel and financial resources as required.
- Ensuring that the CWCs meet at least twenty days in a month or sit on all working days for a minimum of six hours as mandated under Section 28 (1) of the JJ Act, 2015 and Rule 16 (7) of the JJ Model Rules, 2016.
- Monitoring that all CCIs maintain standards in the children's homes, with provision for segregation based on age and seriousness of crime committed.
- Ensuring that CWCs are functioning from the Children's Homes or any other child friendly environment and are barred from functioning from any court like premises as per Rule 16 (10) of JJ Model Rules, 2016.
- Holding periodic open house programmes and public hearings at panchayat and block level with participation of local level administration empower families of CNCP.
- Documentation and dissemination of good practices on child protection at the village, block and district level, such as establishment of Child Protection Committees at all these levels.

Children in Conflict with the Law (CICL)

A 'child in conflict with law' (CICL) is defined as a person who is alleged or found to have committed an offence and has not completed the age of 18 years on the date of the offence. It provides distinct justice system for adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided and institutions established under the JJ Act. However, a special provision has been inserted for the possibility of trying 16-18 year olds committing heinous offences as adults by Children's Courts set up in every district. A heinous offence is defined as one for which the minimum punishment under the Indian Penal Code is seven years. It provides for a sensitive police, disposal of inquiries and trials in the best interest of the child and through institutions which are well equipped to design and implement the individual rehabilitation and reintegration programme of the child in conflict with law.

The Juvenile Justice Board's (JJB) role is not only to inquire into the crime but also look at why the juvenile committed the offence and to redeem him and to put him on the right track.

Related Policies and Laws

International Laws

Article 3 of the UNCRC requires States Parties to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

National Laws

Constitution of India: Article 21 of the Constitution guarantees to all persons the right to life and states that no person shall be deprived of his life or personal liberty except according to procedure established by law. **Article 22** provides protection against illegal arrest and detention.

Articles 15 (3), 39 (e) & (f), 45 & 47 of the Constitution impose on the State primary responsibility of ensuring that all the needs of children are met and their basic human rights are effectively protected.

JJ Act, 2015: The Act lays down special procedures for prosecuting children in conflict with law. It establishes distinct authorities like the JJB and Special Juvenile Police Units for expediting the process and shielding them from the criminal justice

system. The JJ Act 2015 prohibits death penalty or life imprisonment without possibility of release, and forbids joint trials of CICL with adult offenders. It provides for special orders that may be passed focusing on diversion as found appropriate for their rehabilitation and reintegration and for supervision by probation officers. It also provides for liberal bail provisions for CICL, mandates no disqualification attached to conviction after a reasonable period of time for children below sixteen years of age, but in the case of a heinous offence, records of conviction of such a child shall be retained by the Children's Court.

For 16-18 year olds committing heinous offences, after preliminary assessment they may be referred to Children's Court for trial as adults. While all 16 to 18 year old CICLs found guilty of a heinous offence are liable to the punishment as applicable to adults, the sentence has to be reviewed by the Children's Court after the CICL attains the age of twenty-one years. The Court may then waive off the remainder sentence, or release the CICL under probation or send the child to jail to serve the remaining period of his sentence.

National Legal Services Authority (NALSA) Guidelines for Legal Aid in Juvenile Justice Boards, 2011: In compliance of Hon'ble Supreme Court Order dated 19.08.2011 in the Case of Sampurna Behrua v. Union of India and Others [Writ Petition (C) No. 473/2005] all the State Legal Services Authorities (SLSAs) have been directed to create Legal Aid Centres attached to JJBs in all capital cities. These guidelines further go into the details as to how these centres are to be created and run, detailing roles and responsibilities of JJBs and lawyers in order to ensure that legal aid is accessible, effective, accountable and is of good quality. These guidelines are significant in the sense that these are very detailed and have taken into account the practical problems which CICLs and their families face in accessing legal aid.

National Legal Services Authority Guidelines for Training the Designate Juvenile/Child Welfare Officers Attached to every Police Station and the members of the Special Juvenile Police Unit, 2011:³¹ These guidelines have also been prepared in accordance with the order of the Hon'ble Supreme Court of India's order dated 12.10.2011 in the case of Sampurna Behrua v. Union of India and Others [Writ Petition (C) No.473/2005].

The Commissions for Protection of Child Rights Act, 2005: Section 13(1)(e) enumerates that the National and State Commissions constituted under the Act shall look into the matters relating to children in conflict with law and recommend appropriate remedial measures.

RTE Act, 2009: The Act makes it obligatory on the State to provide free education to children up to the age of 14 years, which would also include children in conflict with the law and children in need of care and protection.

National Policy for Children, 2013: The Policy enumerates a vibrant policy framework for catering to every aspect of the developmental needs of children and also commits to taking special protection measures for including such children. It states that every child has an equal right to learning, knowledge and education. The State recognises the responsibility to secure this right for every child, with due regard for special needs through access, provision and promotion of required environment, information, infrastructure, services and supports towards the development of the child's fullest potential.

Related Schemes

Revised Integrated Child Protection Scheme: The scheme aims at providing preventive, protective and rehabilitative measures for children in need of care and protection and children in conflict with the law as defined under the JJ Act 2015 and with children who come in contact with the law, either as victim or as a witness or due to any other circumstance. The scheme endeavours to bring services closer to vulnerable children and their families for increased access. It makes a conscious shift to family-based care including sponsorship, kinship care, foster care and adoption. Periodic review of children in institutional care for restoration to families is an important part of the scheme and District Child Protection units are being set up to take this role. Childline India Foundation (CIF) has been set up as a nodal organisation, supported by Government of India, to monitor and ensure the qualitative development of the Childline service across the country. Childline is a toll free telephone service (1098) which anyone can call for assistance in the interest of children. It has prescribed minimum quality standards for the services to be provided by its partner organisations that are implementing Childline programmes in various cities and rural areas of the country.

Scheme for Welfare of Working Children in Need of Care and Protection: Provision of opportunities including non-formal education, vocational training, etc., for working children to facilitate their entry/re-entry into mainstream education in cases where they have either not attended any learning system or where for some reasons their education has been discontinued with a view to preventing their continued and future exploitation.

Suggestions for Commissions' Intervention

- Monitor the effective implementation of all components of the JJ Act 2015, the Model Juvenile Justice Rules 2016 and the Integrated Child Protection Scheme as applicable in each State related to the rehabilitation and reintegration of CNCPs and CICLs.
- Ensure monitoring that raises the standard of services extended to children entering the system and builds capacities for child protection functionaries while focusing on family and community based interventions such as counselling, family assistance, educational sponsorships, foster care and inclusion of needs of migrant and single parent.
- Seek periodic reports from the government on its monitoring the implementation of all provisions in law relating to CICL such as:
 - ◆ Maintaining standards in the Observation Homes, Special Homes and Place of Safety with provision for segregation based on age and seriousness of crime committed.
 - ◆ Ensuring that JJBs are functioning from the Observation Homes or any other child friendly environment and are barred from functioning out of the Chief Judicial Magistrate's office or court hall.
 - ◆ Create greater awareness about the powers and functions of JJBs and CWCs among Govt. functionaries of all departments as well as the general public. Recommend to the State to fill the gaps in infrastructure, personnel and financial resources as required.

Corporal Punishment

Strictly defined 'corporal punishment' is the infliction of pain (both physical and mental) intended to change a person's behaviour or to punish them. Corporal punishment is not restricted to schools alone, it can be pain caused by parents at home or any other violent action intended to discipline children or to punish them. It involves, rapping on the knuckles, making the child run in the school ground or kneel down for hours, asking them to stand up for long hours, making them sit like a chair, beating them with a scale, pinching or slapping them, abusing them sexually, torturing them, locking up children alone in classrooms, 'electric shock' and all other such acts. Inflicting corporal punishment on children can lead to insulting, humiliating, causing physical and mental injury, and even death in some cases.

The Committee on the Rights of the child defines 'corporal' or 'physical' punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting ('smacking', 'slapping', 'spanking') children, with the hand or with an implement – a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.

Related Policies and Laws

International Laws

UN CRC in Article 28 (2) recognises the need to forbid corporal punishment, 'State parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity'.

National Laws

The Right of Children to Free and Compulsory Education (RTE) Act, 2009, Section 17 prohibits physical punishment and mental harassment to child and stipulates violation for infringement: (1) No child shall be subjected to physical punishment or mental harassment. (2) Whoever contravenes the provisions of sub-section (1) shall be liable to disciplinary action under the service rules applicable to such person.

JJ Act, 2015: Under Section 82 of the Act, any person in-charge of or employed in a child care institution, who subjects a child to corporal punishment with the aim of disciplining the child, shall be liable, on the first conviction, to a fine of ten thousand rupees and for every subsequent offence, shall be liable for imprisonment which may extend to three months or fine or both.

Indian Penal Code 1860: Section 324 for voluntarily causing hurt by dangerous weapons or means and Section 326 for voluntarily causing grievous hurt by dangerous weapons or means provides imprisonment for ten years and three years respectively with liability to fine.

The Supreme Court has banned corporal punishment for children on 1-12-2000 when it directed the State to ensure 'that children are not subjected to corporal punishment in schools and they receive education in an environment of freedom and dignity, free from fear'.

Ministry of HRD has issued an Advisory banning corporal punishments in schools.³⁰

The National Policy on Education, 1986³² states that 'corporal punishment will be firmly excluded from the education systems'.

NCPCR's recent Advisory/Guidelines dated 26 March 2014 replaces its initial Guidelines which had become dated. The Advisory which has been widely circulated to all State Education Secretaries, School Boards and Secretaries of Ministries of Health and Family Welfare, WCD and Home Affairs, SJE urges state governments and UT administrations to ensure that appropriate State/school level guidelines on prevention of corporal punishment and appropriate redressal of any complaints, are framed disseminated, acted upon and monitored.

NCPCR Corporal Punishment Guidelines has been adopted by NCERT which has included it under a write-up titled Children's Bill of Rights and included in Class VIII Social Science Text Books.

NCPCR's direction forbidding corporal punishment to the Education Departments of all States vide Order: No. NCPCR/Edu.1/ 07/39 of 9 August 2007 urges States to undertake campaigns and publicity drives informing children they have a right to speak against corporal punishment, to create a forum in all residential care facilities where children can express their views, place complaints boxes in all schools, empowers parents to speak out against corporal punishment, encourages Parent Teachers Associations to respond to complaints and that the Department of Education at all levels – block, district and State to establish procedures for reviewing the responses to the complaints of children and monitoring the action taken on the same.

A subsequent NCPCR order on the subject

Order No. NCPCR/Edu.1/07/39 (26 May 2009) addressed to District Collectors/ District Magistrates/Deputy Commissioners (as the case may be) recommends that they hold Block-wise meetings for all the school headmasters and convey to them that strong disciplinary action would be taken if children are subjected to corporal punishment. It also recommends that Education Departments be held accountable for any instance of violation of children's rights and corporal punishment in schools

and to instruct every school headmaster to hold meetings with parents and PTAs and share with them the content of NCPCR guidelines and the procedures to be adopted for protecting children and their rights in schools.

National Policy for Children 2013 under Section 4.6.xv states, 'Ensure no child is subjected to any physical punishment or mental harassment. Promote positive engagement to impart discipline so as to provide children with good learning experience.'

State specific orders banning corporal punishment need to be tracked and monitored.

Suggestions for Commissions' Intervention

- Monitoring the State's compliance with its recommendations related to the following:
- Wide dissemination of NCPCR's Guidelines on Corporal Punishment and the comprehensive publication titled, 'Eliminating Corporal Punishment in School' as part of publicity campaign to create a critical consciousness and challenging public misconceptions of corporal punishment.
- Propagation of information packages sensitising various stakeholders such as teachers, teacher training institutes, education bureaucracy, district administration and parents on the derogatory effects of corporal punishment.
- Empowerment of children to stand up against corporal punishment through social advertising in collaboration with NCERT, MHRD and State Education Departments. For example, a precise statement on the 'rights of the child' along with contact information on the Emergency Outreach Services Child Helpline could be printed on the first page of every textbook that children use from Class IV onwards, so that it is easily accessible to any child.
- Installation of Emergency Outreach Services Child Helplines in all schools to enable children lodge complaints on violations of their rights.
- Provision of teacher training in positive disciplining and information to parents on lack of relationship between hitting and learning.
- Recommending to Parliament and Law Ministry the amendment of existing Central and State laws and rules to bring them in conformity with national and international rights commitments with respect to corporal punishment.

- Urging MHRD to create a national repository of State/UT government rules, directives, advisories ordinances etc. on the subject and putting it in the public domain which could be monitored by Children's Commissions for current statutory positions in respect of many child rights. Best practices of States could also be shared with other States.
- Taking the initiative of motivating journalists from within the print and multi-media to form a core team whose job would be to investigate and follow up reported cases of corporal punishment.
- Documenting complaints on corporal punishment with critical reflections and commentary which can be used by researchers and for purposes of training during pre-service and in-service programmes of teacher education.

Children in Institutions

The current response to the problem of child destitution in India is the extensive institutionalisation of children. The profiles of children entering care are generally those who are in crisis situations and in need of substitute care. Some such children may be in institutions for short-term, till can they be suitably rehabilitated and restored to their family or family like environment, while some may end up spending their entire childhood or a major part of their childhood in long-term institutional care. India is committed to protect rights of all children, whatever be the situation they find themselves in.

Related Policies and Laws

International Laws

UN Convention on the Rights of the Child: That children need and have a right to their family or family like environment is a theme of the entire Convention.

Article 3 of the UNCRC obligates the States Parties to 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 the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 25 of the UNCRC requires the States Parties recognise the right of a child who has been placed by the competent authorities for the purposes of care,

protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

National Laws

The JJ Act, 2015, Section 41 mandates the registration of all CCIs. Section 40 (1) of the Act provides that restoration of and protection to a child shall be the prime objective of children's homes, Specialised Adoption Agency or the open shelters. Section 39 (1) of the Act provides that rehabilitation and social integration of children under this Act shall be undertaken preferably through non-institutional measures such as by restoration to the family or guardian with or without supervision or sponsorship, or adoption or foster care. For CICL, Section 39 (2) provides for rehabilitation and social integration through Observation Homes, if the child is not released on bail or in Special Homes or Place of Safety or fit facility or fit person as per order of the JJB. CNCP Section 39 (3) provides for rehabilitation and social reintegration of the child during his/her stay in an observation home or special home or place of safety or fit facility or with a fit person as per orders of the JJB. In both cases, the process of rehabilitation and social integration is to be carried out by the preparation of individualised care plans for children to mainstream them at the earliest.

The Commissions for Protection of Child Rights Act, 2005: Section 13(i) vests powers in the Commissions to inspect or cause to be inspected any juvenile custodial home, or any other place of residence or institution meant for children, under the control of the Central Government or any State Government or any other authority, including any institution run by a social organisation; where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary.

National Policy for Children, 2013: The policy mandates to take steps to secure the rights of children temporarily or permanently deprived of parental care, the State shall endeavour to ensure family and community-based care arrangements including sponsorship, kinship, foster care and adoption, with institutionalisation as a measure of last resort, with due regard to the best interests of the child and guaranteeing quality standards of care and protection.

Related Schemes

Revised Integrated Child Protection Scheme: The ICPS will focus its activities on children in need of care and protection and provide preventive, statutory and care and rehabilitation services to all vulnerable children. The scheme would endeavour to bring services closer to vulnerable children and families for increased access and would pursue a conscious shift to family-based care including sponsorship, kinship care, foster care and adoption. Periodic review of children in institutional care for restoration to families would also be undertaken. A major thrust of ICPS will be to strengthen the family capabilities to care for and protect the child. Institutionalisation of children shall be the last resort and the scheme focuses interventions from an over reliance on institutionalisation of children and move towards more family and community-based alternatives for care. Institutionalisation should be used as a measure of last resort after all other options have been explored. With the launch of the ICPS, creation of new institutional facilities and maintenance of existing institutional facilities is also being supported under it. The ICPS also ensures that while setting up any institution, prescribed standards of care for children are adhered to. It provides for creation of new institutional facilities and maintenance of existing institutional facilities and ensures that while setting up any institution, prescribed standards of care for children are adhered to.

Scheme of Assistance to Homes for Children (Shishu Greh) to Promote in-country Adoption: One of the primary objectives of the scheme is to provide institutional support within the country for care and protection of infants and children up to 6 years of age who are either abandoned or orphaned/ destitute and for their rehabilitation through in-country adoption.

Scheme for Welfare of Working Children in Need of Care and Protection: The programme intends to lend support to projects in urban areas not already covered under the existing schemes of the Ministry of Labour. The target group being child workers, especially those who have none or ineffective family support such as children of slum/ pavement dwellers/ drug addicts, children living on railway platforms, children working in shops, *dhaba*, children engaged as domestic workers, etc.

Suggestions for Commissions' Intervention

- The Commissions to carefully examine need for institutionalising of children and undertake the following:
- Recommend to evolve a minimum uniform standard in institutions in terms of, education, hygiene, healthcare, recreation, etc. with the objective of improving contemporary practices, based on current knowledge and developmental needs of children. Review existing or new standards developed.
- Monitor working of CWCs and JJBs and recommend their periodic reviewing of the functioning of in-built monitoring systems (Management Committees, Inspection Committees and Children's Committees) within the JJ Act, 2015 to keep a check on functioning of these institutions.
- Promote awareness, during inspections, that children in institutions should be cared for in ways which minimises period of care and maximises opportunities for parents' continued involvement when in care. Individual care plans should be in place and provided in the context of partnership with parents, wherever this is in the interests of the child.
- Recommend to the government, the inclusion of ISO 9001:2008 Quality Management System as the standards indicator for CCIs should be considered as has been successfully practised in Tihar Jail. Following such quality management systems would ensure that Children's' Homes have a system for continual improvement of its processes and prevention of breach of standard procedures. The certification by a third party of Children's' Homes would bring in greater transparency and accountability in their operations.
- Guide the safety of children in all residential and non-residential institutions and to ensure there is additional sensitivity and adequate measures in place in all senses – physically, emotionally and sexually. A Child Protection Policy is a must at all service programmes run for children. Such a policy would also develop good practice standards and must mandatorily be signed by all personnel working in such institutions in any capacity.

Missing Children

Children going missing are a cause for deep concern. Missing children include those children who due to multiple factors have been separated from their primary place of residence without the consent or knowledge of their parents or guardians. The cardinal reason attributed to this phenomena in India are: abduction/kidnapping by

family or non-family members or strangers; children abandoning their homes from unfriendly and hostile environments; children who flee from home to cities in lure of independence and freedom from family ties; abandoned children and children who are trafficked, smuggled or exploited for various purposes and children who are lost or injured.

All missing children are vulnerable to exploitation including sexual exploitation and child pornography. It is a multi-billion dollar industry aided by the use of the internet with the 'thirst' for younger victims growing. As a group, missing children are thus heterogeneous and there is no adequate data or consistent set of definitions to describe them. All this poses a serious problem for families who lose a missing child and run pillar to post trying to find them.

About 15,988 children were reported missing last year until April 2015, of which over half (6,921) were untraced. According to National Crime Records Bureau on an average about one lakh children go missing every year in India.³³

Related Policies and Laws

The Supreme Court in the case of *Bachpan Bachao Andolan v. Union of India* [Writ Petition (C) No. 75/2012, read with Contempt Petition (C) No. 186/2013 in this case], directed on 10.05.2013 that in case of every missing child reported, there will be an initial presumption of either abduction or trafficking, unless, in the investigation, the same is proved otherwise. In case a child is not recovered within four months from the date of filing of the First Information Report, the matter may be forwarded to the Anti-Human Trafficking Unit in each State in order to enable the said Unit to take up more intensive investigation regarding the missing child.

JJ Act, 2015 and Model JJ Rules, 2016: Section 32 of the Act stipulates mandatory reporting in case of a child who appears or claims to be abandoned or lost or an orphan before any individual or a police officer, functionary of an organisation or a nursing home, or hospital or maternity home. Failure to do so is recognised as an offence under Section 33, for which imprisonment up to six months or fine of ten thousand rupees or both is prescribed as the punishment under Section 34 of the Act.

Rule 92 (2) of Model JJ Rules, 2016 requires the police to immediately register an FIR on receipt of a complaint about a missing child. Rule 92 (5) provides that where a child cannot be traced within four months, the investigation of the case shall be transferred to the AHTU in the district which shall make reports every three months to the District Legal Authority regarding the progress made in the investigation. Rule 92 (7) calls upon the Central Government or the State Government to develop appropriate SOPs for the manner of inquiry in cases of missing children.

The High Court of Allahabad in its Order, in the matter of Children detained in Rajkiya Bal Grih [Criminal Misc. Writ Petition No. 20737 of 2011] had sought the response of the MWCD and NCPCR on measures being taken for hosting a website with access to all districts in the country and which would upload information on children living in different CCIIs (government or NGO run) with photographs so that parents/guardians looking for missing children can easily identify their children on visiting the website.

Concerned about the increasing number of missing persons cases, the Home Departments of certain States have issued directions on the matter, such as the Delhi Police Addendum to Standing Order No.252/2010 on Missing Children for registration of FIR on the same day.

Ministry of Home Affairs has issued an Advisory on Missing Children 31.01.2012³⁴ to all States/UTs for compliance of the provisions as existing in the JJ Act, 2000 and its amendment in 2006. It has specifically recommended implementation of the guidelines issued by Hon'ble Supreme Court of India dated 14/11/2002 in *Horilal vs. Commissioner of Police, Delhi*; *Sampurna Behrua vs. Union of India & Ors.* [WP (Civil) No.473 of 2005] Order dated 12/10/2011; and implementation and monitoring of NHRC Guidelines on Missing Children, 2007.

On 31 January 2012, the Ministry issued another detailed Advisory on missing children and steps to be taken for tracing the children. It includes various directions to States/UTs like computerisation of records, involvement of NGOs and other organisations, community awareness programmes etc.³⁵

Following the Supreme Court's order dated 10.05.2013 in *Bachpan Bachao Andolan vs. UoI*, [W.P. (Civil) No. 75 of 2012], the Ministry of Home Affairs has circulated an advisory dated 25 June 2013 to all the States/UTs to file mandatory FIR in case of missing children.³⁶

National Policy for Children, 2013 enumerates that safety and security of all children is integral to their well-being and children are to be protected from all forms of harm, abuse, neglect, violence, maltreatment and exploitation.

Related Schemes

Web Based Counselling and Information Portal for Women and Children: A website launched by the Government provides guidance from a noted panel of experts on issues such as missing children, child trafficking, sexual abuse, beggar children and a lot more.

Track Child: The Child Tracking System has been set up with data entry mechanisms and unified procedures for enabling centralised coordination through effective use of web-enabled software. It aims to create a web-enabled data management system on child protection as a resource base for child protection issues. A nationwide web portal has been developed for tracking missing children and their ultimate repatriation and rehabilitation.³⁷ This portal is accessible to all on the link www.trackthemissingchild.gov.in

Khoya-Paya is a web portal launched by the MWCD for citizens to exchange information on missing and found children.

There are several other websites to track missing children in India. These include ZIPNet – a joint platform operated by the Delhi Police and used by several northern states, and HomeLink, which is operated by the DBNF-YaR. Several states such as Andhra Pradesh and Karnataka also operate their own sites.

Integrated Programme for Street Children: The main objective of the programme is to prevent destitution of children and facilitate their withdrawal from the streets. The programme provides for shelter, nutrition, healthcare and education.

Suggestions for Commissions' Intervention

- To examine the system adopted by the Police and other concerned agencies for handling the missing and traced children in the state.
- To study and disseminate all relevant provisions under the law, rules, standing orders, circulars, guidelines, SOPs and court rulings on the subject to the people at large.
- Assess and analyse the actual enforcement and compliance of various laws, regulations, rulings, guidelines, etc.
- Evolve a Manual containing the respective role of various agencies and stakeholders dealing with missing and found children in the state.
- Recommend to the Ministry of Home Affairs that specialised training be provided to law enforcement functionaries to trace missing children as response time on the part of police in terms of registration of FIR, fast-tracking inquiry and investigation within the 'golden period' continues to remain lax.
- Recommend to government to universalise the Emergency Outreach Helpline in the country to enable trafficked and lost children have access to free of cost telephone services to seek protection.

- Recommend opening of more ‘drop-in-centres’ and ‘open shelters’ in the missing children prone localities for children to get shelter and care till their parents return from work.
- Emphasise the importance of ‘first few hours’ in all platforms where it raises or discusses the issues concerning missing children. Very important and precious ‘first few hours’ after a child goes missing are lost due to inaction by parents or by police. Children are trafficked or taken to the neighbouring districts/states within no time and therefore go out of the reach/jurisdiction of the Police/Police station of the area concerned.
- Comply with NCPCR’s advisory to set up ‘Task Force on Missing Children’ in their respective States/UTs and undertaking monthly reviews on a fixed day of each month along with the Departments of DWCD, SCPS, Police, DCPUs, CWCs, NGOs and other stakeholders to prioritise the matter of missing children. Uploading real time data on missing children or linking with missing children’s portals would strengthen the effort.
- NCPCR could facilitate sharing of data between States on their website and monitor progress to fast track the tracing of missing children.

Children Affected by AIDS (CABA)

National AIDS Control Organisation (NACO) defines CABA as any child (0-17 years) living with Human Immunodeficiency Virus (HIV), or who has a family member living with HIV, who has lost one or both parents, siblings or other family members due to AIDS, or is vulnerable because of circumstances that increase their risk of HIV infection (children on the streets, orphans, children of sex workers, child labourers, child sex workers and trafficked children). CABA includes HIV exposed children who are infants born to mothers living with HIV, HIV infected children living with HIV/AIDS and HIV affected orphans who are not HIV infected, but have lost one or both parents/guardians. Girls orphaned by HIV tend to be more socially vulnerable.

Infection of the cells of the immune system by HIV leads to the destruction of the immune system and impairs its functioning. The most advanced stage of HIV infection is defined by the occurrence of any of more than 20 opportunistic infections (tuberculosis etc.) and is transmitted through unprotected sexual intercourse (vaginal or anal), and oral sex with an infected person; transfusion of contaminated blood; and the sharing of contaminated needles, syringes or other sharp instruments. It may also be transmitted between a mother and her infant during pregnancy, childbirth and breastfeeding.

HIV/AIDS is a pandemic which threatens physical health and survival of millions of children and also deprives them of parental love, care and protection. It is also associated with stigma and discrimination and often leads to exclusion. It can impede a child's access to education and retention in schools due to economic hardship of their parents. Often, older children are compelled to care for sickly infected parents and younger siblings and on the loss of parents assume the role of the 'head of the household' with its accompanying responsibilities. On the demise of their parents, such children also suffer loss of inheritance rights as they are often too young to know how to claim them and get exploited.

Apart from the aspect of treatment, psychological, social and economic concerns are relatively neglected and the consequences are becoming more significant at the community level. Specific concerns of adolescents and young people living with and/or affected by HIV and AIDS are lack of social security due to loss of parents, lack of self-esteem due to the attached stigma, poor economic status resulting in poor nutritional status especially for girls, school dropouts, early marriages, abuse and other forms of vulnerabilities that are becoming common.

Related Policies and Laws

JJ Act, 2015 provides special care, treatment and rehabilitation of children in need of care and protection and as CABA would fall within its definition, they would be entitled to all the benefits under this law.

National Policy for Children, 2013: Section 4.4. (x) prioritises the prevention of HIV at birth and ensures that infected children receive medical treatment, adequate nutrition and aftercare and are not discriminated against in accessing their rights.

Related Schemes

The National AIDS Control Organization (NACO) set up for the implementation of National AIDS Control Programme (NACP) is creating increasing awareness among the masses about HIV/AIDS through NACP-IV, its current prevention-oriented plan for preventing infection among the high risk population. It has also established Anti-Retroviral Therapy (ART) Centres, Prevention of Parent to Child Transmission (PPTCT) Centres, and Integrated Counselling and Testing Centres (ICTC) at block and district levels to initiate the prevention and treatment programmes.

The National AIDS Control Programme (NACP) launched in 1992 is being implemented as a comprehensive programme for prevention and control of HIV/AIDS in India. Over time, the focus has shifted from raising awareness to behaviour change, from a national response to a more decentralised response and to increase involvement of NGOs and networks of People Living with HIV/AIDS (PLHIV).

The Adolescent Education Programme (AEP) was launched in 2005 by NACO to address the vulnerability of adolescents in India with the aim to provide adolescents with age-appropriate information on the process of growing up during adolescence, HIV and AIDS, STIs and substance misuse. It focuses on the development of life skills as the most effective way to cope with the challenges of adolescence, thus striving to curtail the spread of infections such as HIV and reduce the instances of substance misuse and other risky behaviours. Prevention of HIV, through safer sexual behaviours among the young, continues to be the most effective long-term strategy in reducing HIV infection.³⁸

Integrated Child Protection Scheme provides for preventive, statutory and care and rehabilitation services for the overall development of children in need of care and protection, including children infected and/or affected by HIV.

Through ICPS, a lateral linkage with other line departments are established for timely and appropriate interventions and it also creates a platform for other departments to provide services envisaged under their existing programmes to children, wherever required. For example, the ICPS will provide support to children with special needs that include children affected by HIV/AIDS. The District Child Protection Society in every district will work in close association with the officials of health department to reach out to such children in need of care and protection and provide necessary services. The scheme provides support for additional nutritional or medical needs along with provision of institutional and non-institutional care to such children.

Suggestions for Commissions' Intervention

- Recommend that such children may get access of state services through ICDS, midday meals and public distribution system, free healthcare including medicines to address their health issues.
- Monitor that free access to quality prevention, treatment, care and support services may be ensured by the State Government.
- Review schemes/policies/programmes related to children affected/infected with HIV/AIDS.
- Organise sensitisation programmes and Child Friendly services including counselling facilities in the hospitals, PHCs/CHCs.
- Establish a comprehensive School Health Programme across the country wherein all children with chronic ailments can be identified and thereafter taken care of.

- Develop a comprehensive Child Health Policy which may cover every child infected as well as affected with HIV/AIDS and addresses all issues faced by such children.
- Develop SOPs for ensuring Rights and Entitlements of children infected/affected with HIV/AIDS.

Children in Left Wing Extremism Affected Districts

A number of areas in the country have been affected by Left-Wing Extremism. Here we are dealing with the vulnerabilities of children in different scenarios: (a) children are at high risk of being lured into recruitment by armed groups as ‘child soldiers’ and thereby ‘victims of circumstances’, (b) children living in conflict zones in the midst of security forces and armed groups (without being recruited) – their needs and vulnerabilities and (c) children displaced by conflict (IDPs) – their needs and vulnerabilities. Conflict makes children susceptible to exploitation of every kind – physical, social, economic, psychological, etc., trafficking, child labour, child marriage, rape, abduction, separation from their families, grievous injuries, recruitment, long term psychological effects and death.

JJ Act, 2015: Section 83 prohibits recruitment or use of children by self-styled militant groups or other adults for illegal activities and is punishable for rigorous imprisonment upto seven years with fine of five lakh rupees. Section 83 of the JJ Act, 2015 is reproduced:

Section 82 (1): Any non-State, self-styled militant group or outfit declared as such by the Central Government, if recruits or uses any child for any purpose, shall be liable for rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine of five lakh rupees.

Section 83 (2): Any adult or an adult group uses children for illegal activities either individually or as a gang shall be liable for rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine of five lakh rupees.

National Policy for Children, 2013 under Section 4.11 commits to taking special protection measures to secure the rights and entitlements of children such as those affected by armed conflict, characterised by their specific social, economic and geopolitical situations including their need for rehabilitation and reintegration.

Education as Emergency Relief, NCPCR, 2012:³⁹ A policy on education as a measure of emergency relief brings out the significance of education in addressing the poverty and human rights of children in conflict situations, specifically highlighting

the immediacy of intervention and varying/differential needs of children in different age groups while accessing their right to education. This policy document specifically seeks to address rights of children in the age group of 6 to 18 years.

Related Schemes

The Revised Integrated Child Protection Scheme provides access to safe and secure environment for overall development of children in need of care and protection, including children in difficult circumstances, such as children affected by, or involved in armed conflict.

Suggestions for Commissions' Intervention

- Ensuring that all children under the age of 18 be handled by the Juvenile Justice system.
- Strengthening coordination among the MWCD and other relevant entities in order to ensure that sufficient resources are set aside within the budget for the care and protection of these children.
- Developing a programme aimed at the rehabilitation and reintegration of child victims for enabling access to schooling for such children and providing health and medical care for children in vulnerable areas.
- Establishing of a monitoring and reporting system for parents and families to report the forcible recruitment of children.

Adolescents

Adolescence is a period characterised by rapid physical, cognitive and social changes, including sexual and reproductive maturation; the gradual building up of the capacity to assume adult behaviours and roles involving new responsibilities. It is also a period which poses new challenges to health and development owing to their relative vulnerability and pressure from society, including peers. These challenges include developing an individual identity and dealing with one's sexuality.

India has a large population of children in the age group of 14-18 years who are considered to be adolescents. Many of them have been forced to assume the role of adults, grapple with poverty, economic and personal security, ill health, early marriage, lack of education, negligence on part of parents, miscommunication between the parents and adolescents and living in an exploitative environment from an early age both at home and in society.

Related Laws and Policies

National Laws

Minimum Wages Act, 1948: A claim can be made for fair share of wages through this Act which enforces payment of minimum rates of wages and hours of work for a normal working day for all kinds of employment.

Factories Act, 1948: It exhaustively deals with the working conditions of adolescents in factories and formulates regulations on their employment on dangerous machineries. The Act defines adolescents as young persons between 15 to 18 years and calls for the appointment of DMs as Inspectors as well as surgeons to certify the age and capability of young persons in the concerned factory.

Mines Act, 1952 (as amended in 1983): After the commencement of the Mines (Amendment) Act, 1983, no person below eighteen years of age shall be allowed to work in any mine or part thereof. It however allows apprentices and other trainees, not below sixteen years of age, to work, under proper supervision by the manager provided approval of a chief inspector or an inspector is obtained before they are allowed to work.

The Child Labour (Prohibition and Regulation) Amendment Act, 2016: This is the umbrella legislation dealing with child labour in the country. Enacted recently, the Act came into force on 1st September 2016. Section 3 of this Act has prohibited employment of children below the age of 14 years in all sectors, except where (a) the child helps his family or family enterprise after his school hours or during vacations, and such work is not a hazardous occupation or process as laid down in the Schedule; and (b) the child works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities other than the circus, subject to prescribed conditions and safety measures, and only if it does not affect the child's school education.

The Act further prohibits employment of adolescents aged between 14 and 18 in any of the hazardous occupations or processes set forth in the Schedule. The hazardous occupations and processes include mines, inflammable substances or explosives, and hazardous process as defined in Section 2 (cb) of the Factories Act, 1948.

JJ Act, 2015: Provides for special intervention in case of children below 18 years of age engaging in serious crimes (children in conflict with the law) who are almost always adolescents and focuses on their rehabilitation and reintegration.

Prohibition of Child Marriage Act, 2006: It bars the marriage of girls below 18 years and boys below 21 year but compliance is low and needs strict monitoring. A child marriage is void if the child is taken away from their lawful guardian by enticement,

force or use of deceitful means or is sold or trafficked for the purpose of marriage. The Courts have the power to issue injunctions to prevent child marriages from taking place. The solemnisation of child marriages is a cognizable and non-bailable offence.

POCSO Act, 2012: The Act provides for protection of children from these offences along with aggravated forms of the first two: (a) Penetrative sexual assault, (b) Sexual assault, (c) Sexual Harassment and (d) Pornographic offences. The Act has introduced elements of child jurisprudence in defining child friendly procedures and provide for the establishment of Special Courts for trial of such offences.

The National Policy for Children, 2013: It states that the State shall provide adequate services towards children, both before and after birth and during the growing stages for their full physical, mental and social development.

It also aims to provide adolescents access to information, support and services essential for their health and development, including information and support on appropriate lifestyle and healthy choices and awareness on the ill effects of alcohol and substance abuse.

Related Schemes

Modular Employable Skills (MES) under Skill Development Initiative Scheme (SDIS) for early school dropouts, unemployed adolescents, children previously involved in child labour and their families, and other existing workers in the unorganised sector in order to provide them vocational training, improve their employability, certify their skills acquired informally and to upgrade these skills.

The National Institute of Open Schooling⁴⁰ provides Distance Vocational Education Programmes and practical training through Accredited Vocational Institutes (AVIs) for school leavers, who have may have passed Classes 5, 7, 8 or 10, for six months to two years.

Kishori Shakti Yojana (KSY)⁴¹ is a scheme of MWCD to improve the nutritional, health and development status of adolescent girls, promote awareness of health, hygiene, nutrition and family care, link them to opportunities for learning life skills, going back to school, help them gain a better understanding of their social environment and take initiatives to become productive members of the society.

SABLA⁴² The main objectives of the programme are to enable the adolescent girls for self-development and empowerment; improve their nutrition and health status; promote awareness about health, hygiene, nutrition, adolescent reproductive and sexual health (ARSH) and family and child care and mainstream out of school adolescent girls into formal/non formal education.

Rashtriya Kishor Swasthya Karyakram (RKSK): It is a health programme launched by the Ministry of Health and Family Welfare for adolescents in the age group of 10-19 years which would target their nutrition, reproductive health and substance abuse. The programme comprehensively addresses the health needs of the 243 million adolescents, introduces community-based interventions through peer educators and is underpinned by collaborations with other ministries and state governments.

Weekly Iron and Folic Acid Supplementation (WIFS) Programme: The Ministry of Health and Family Welfare has launched the Weekly Iron and Folic Acid Supplementation (WIFS) Programme to meet the challenge of high prevalence and incidence of anaemia amongst adolescent girls and boys. WIFS is evidence based programmatic response to the prevailing anaemia situation amongst adolescent girls and boys through supervised weekly ingestion of IFA supplementation and biannual helminthic control. Objective of WIFS is to reduce the prevalence and severity of anaemia in adolescent population (10-19 years).

Menstrual Hygiene Scheme (MHS): The Ministry of Health and Family Welfare has introduced a scheme for promotion of menstrual hygiene among adolescent girls in the age group of 10-19 years in rural areas. The major objectives of the scheme are to increase awareness among adolescent girls on Menstrual Hygiene; to increase access to and use of high quality sanitary napkins to adolescent girls in rural areas; to ensure safe disposal of Sanitary Napkins in an environmentally friendly manner. Under the scheme a pack of six sanitary napkins is provided under the NRHM's brand 'Freedays'.

Beti Bachao Beti Padhao: A major initiative to improve the Child Sex Ratio and ensure girls' education towards ensuring gender equality – Beti Bachao Beti Padhao has been launched in January 2015. This focuses on multisectoral interventions in 161 gender critical districts, where the Child Sex Ratio is very low. Multisectoral action in 161 districts will focus on implementation of the [Pre-Conception and Pre-Natal Diagnostic Techniques \(PC & PNDT Act\)](#), strengthen community action, improve retention of girls in elementary and secondary schools, ensure the availability of functional toilets for girls, capacity-building and sensitisation of government officials and grass roots functionaries. These interventions will be supplemented by a national media campaign. The Union MWCD is the nodal ministry and will be assisted by Ministry of Health and Family Welfare, Ministry of Human Resource Development and Ministry of Information and Broadcasting in this endeavour.

Rashtriya Madhyamik Shiksha Abhiyan (RMSA),⁴³ 2009: It is a shared scheme by the Centre and State to achieve universalisation of secondary education, viz., standard 9th and 10th to check the dropout rate after elementary education.

Adolescence Education Programme (AEP):⁴⁴ This programme was introduced by the Ministry of HRD at secondary level to focus on making students aware of the concerns of adolescence stage, and dangers of HIV/AIDS and substance abuse; helping them to acquire necessary life skills to enable them to avoid risky situations; to take informed decisions and to develop healthy and responsible behaviour.

National Programme for Education of Girls at Elementary Level (NPEGEL) – being implemented across the country in Educationally Backward Blocks (EBBs), i.e., identified blocks across India where the female literacy rate is below the national average of 46.13%, and gender gap in literacy is above the national average of 21.59%, blocks of districts with a high concentration (at least 5%) of scheduled castes/scheduled tribes (SC/ST) populations, and the SC/ST female literacy rate is below 10% and selected urban slums.

Hostels/Scholarships for SC/ST, girls, boys: The Babu Jagjivan Ram Chhatrawas Yojana initiated by the Ministry of Social Justice and Empowerment envisages the construction of Hostels for SC Girls and Boys for middle and secondary schools through Field Implementing Agencies (States/UTs/Universities/NGOs) with the overall vision of reduction of their dropout rate. It is a centrally sponsored scheme to counteract the dropping literacy rates of tribal children particularly of girls. The Ministry of Tribal Affairs also implements a scheme on similar lines called the **Hostel for Scheduled Tribe Boys and Girls**.

National Literacy Mission/Sakshar Bharatis a centrally sponsored scheme of the Department of School Education and Literacy (DSEL), Ministry of Human Resource Development (MHRD) which has the mandate of promoting adult education, especially of women.

The National Policy for Children, 2013 states that the State shall provide adequate services towards children, both before and after birth and during the growing stages for their full physical, mental and social development.

Suggestions for Commissions' Intervention

- Undertake review of laws regulating employment of adolescent children such as Child Labour Prohibition and Regulation Act, Factories Act, Minimum Wages Act with a view to abolish all forms of child labour in this age groups.
- Monitor the State's implementation of adolescent reproductive and sexual health schemes with focus on reorganising the existing public health system and linking up with ICTCs and establishing appropriate referrals for HIV/AIDS and RTI/STI cases.
- Seek periodical monitoring reports with statistical inputs from governments of initiatives for preparing adolescents for employment through imparting skills and linking to schemes.
- Seek that government puts in place a permanent institutional framework, entrusted with the requisite authority and resources and responsible solely for skill development and better employment of our vast young population.
- Ensure availability of information on children's rights and entitlements and different schemes and programmes using different communication methods including use of social media counselling and health services for adolescents.
- Build convergence with various ministries for effective monitoring of schemes/ programmes for adolescents.
- Monitor Menstrual Health Management knowledge and life skills training.
- Organise awareness programme on alcohol and substance abuse as a part of regular school activity and curriculum and dissemination of related information.

Birth Registration

Birth registration is a permanent and official documentation of a child's existence, identity, name and nationality. *Birth registration* is important as birth certificate is a document to be used for: legal identity, age, sex or nationality, travelling abroad or applying for a passport or getting government facilities such as accessing free and compulsory education, receiving medical treatment, inheriting property and preventing exploitation. Proof of age is also important for age verification of children entering the juvenile justice system.

Related Policies and Laws

Registration of Births and Deaths Act, 1969: Under Section 13(3) of the RBD Act, 1969 if anyone has not registered a birth within a year then the age has to be determined by the judicial body on the basis of an order of a medical board. Also, under this section the Magistrate has to convert the age into date of birth.

JJ Act, 2015 & Model JJ Rules, 2016: The jurisdiction of this act becomes operative when the child is below 18 years of age. Determination of age under the JJ Act 2015 may be undertaken by seeking evidence by obtaining the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof; the birth certificate given by a corporation or a municipal authority or a panchayat; and only in the absence of above options, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board (Section 94 of the JJ Act, 2105).

Related Schemes

'States have separate schemes/initiatives for accelerating birth registration and SCPCRs will need to track the schemes being implemented in their states/UTs to monitor progress in birth registration.'

Suggestions for Commissions' Intervention

- Review and see through implementation of NCPDR'S recommendations to State governments, some of which are included below:
- Advocate for Flexibility in birth registration procedures for children who have never been registered under the RBD Act, 1969 such as insistence on address proof, place of birth, name of parents, insistence of registering only at place of birth and mandatory recommendation by ward/panchayat level officials. Modification of State rules, if required to enforce the legislative intent as envisaged under Act.
- For children within the juvenile justice system the responsibility of acquiring birth registration should be on the Probation Officer or the DCPUs.
- Outreach programme to reach 100% birth registration on campaign mode on the lines of the UID campaign by involving other departments and civil societies.

- DCPUs should pro-actively locate and refer children without birth registration to the CWC/JJB for birth registration.
- NGOs should be encouraged to recommend the names of the children/street children for birth registration.
- The birth registration should be computerised and centralised for total transparency.
- Advocate that each district authority should initiate a birth registration drive, and ensure that children have a form of legal identity. They should liaise with panchayats to ensure they have covered all the children in the district.

Provision of Aadhaar Card

The Commissions are mandated to protect the rights of all children, particularly vulnerable children who are in need of care and protection and are orphan, runaway and do not have a home or shelter or missing/trafficked. They are either in CCIs or live on the streets.

Many of such vulnerable children have no identification. In the absence of identification document it becomes difficult for them to access the schemes, benefits or services being provided by Government. There are a considerable number of such children in CCIs, who need to be provided with food, medical and insurance facilities for their survival and development.

For this purpose, provision of identification, Aadhaar Card is the utmost necessity. Government of India has notified the new Aadhaar Act, which gives a statutory backing of transfer of subsidies and benefits to eligible people.

State Commissions may ensure through the State Governments that the children who are in CCIs or live on the streets and have no identity may be facilitated the provision of Aadhaar Card. This may be done through the system of 'Introducers' which would be Superintendents in case of children in CCI. This practice is already being followed in many of the States at the insistence of NCPCR. Once the Aadhaar Cards are provided, the State Commissions may also facilitate through the concerned departments to ensure that bank accounts of such children are opened for their financial inclusion.

Children Between 0-6 Years of Age

Early Childhood Care and Development (ECCD) is an essential component of children's rights for their survival and development and is based on the assumption that survival alone is not enough but that overall holistic development of the child is equally important. These developmental needs include healthcare, nutrition, psycho-social development and education.

The vulnerability of children below four years is the highest amongst all ages as proved by the sample Registration System of 2010 that estimated that, out of the total deaths reported, 18.4% are deaths of children in this age group 1 to 5. The well-being of the mother is essential for the success of ECCD and also needs to be catered for.

Related Policies and Laws

International Laws

UN Convention on the Rights of the Child: Article 6 mandates that States Parties recognise that every child has the inherent right to life and shall ensure to the maximum extent possible the survival and development of the child.

Article 18 specifies that States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

Article 24 spells out that States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health and shall take appropriate measures:

- (a) To diminish infant and child mortality;
- (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary healthcare;
- (c) To combat disease and malnutrition, including within the framework primary healthcare, through *inter alia* the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
- (d) To ensure appropriate pre-natal and post-natal health care for mothers;
- (e) To ensure that all segments of society, in particular parents have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
- (f) To develop preventive health care, guidance for parents and family planning education and services and take measures with a view to abolish traditional practices prejudicial to the health of children.

National Laws

Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992: It provides for the regulation of production, supply and distribution of infant milk substitutes, feeding bottles and infant foods with a view to the protection and promotion of breastfeeding and ensuring the proper use of infant foods and for matters connected therewith or incidental thereto.

Right to Food Security Act, 2013: The Act provides for food and nutritional security in human life cycle approach by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and for matters connected therewith or incidental thereto.

The Right of Children to Free and Compulsory Education Act, 2009: With a view to prepare children above the age of 3 years for elementary education and to provide early childhood care and education (ECCE) for all children until they complete the age of six years, the Act states that the appropriate Government may make necessary arrangement for providing free pre-school education for such children.

Factories Act 1948: The Act provides that in every factory where more than 30 women workers are employed there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women. Also, such rooms shall provide adequate accommodation, shall be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants.

Similar provisions have been made under Plantations Labour Act, 1951; Mines Act, 1952; Beedi & Cigar Workers (Conditions of Employment) Act, 1966; Building and Construction Workers Act (Regulation of Employment and Conditions of work), 1996.

Mahatma Gandhi National Rural Employment Guarantee Act, 2005: The Act provides that facilities of safe drinking water, shade for children and periods of rest, first-aid box with adequate material for emergency treatment for minor injuries and other health hazards connected with the work being performed shall be provided at the work site. In case the number of children below the age of six years accompanying the women working at any site is five or more, provisions shall be made to depute one of such women worker to look after such children.

National Early Childhood Care and Education Policy 2013: The policy has recognised ECCE as a critical input for human resource development and as a support programme for primary education. The key areas of this policy are universal access with equity and inclusion and strengthening capacity, monitoring and supervision, advocacy, research and review for promoting the optimal development and active learning capacity of all children below six years of age.

The National Policy for Children, 2013: It states that the State shall provide adequate services towards children, both before and after birth and during the growing stages for their full physical, mental and social development. It shall provide universal and equitable access to quality ECCE for optimal development and active learning capacity for all children below six years of age. It shall provide and promote crèche and day care facilities for children of working mothers, mothers belonging to poor families, ailing mothers and single parents.

Related Schemes

Integrated Child Development Services Scheme: The flagship Scheme provides children below six years especially those from vulnerable and remote areas an integrated package of services under supplementary nutrition, non-formal pre-school education, immunisation, health check-up and referral services.

Rajiv Gandhi National Crèche Scheme (RGNCs): Launched in 2006, it aims to help and support the working women from poor sections of the society. Under this scheme the grants-in-aid is provided to NGOs to run crèches for poor working women. **Sarva Shiksha Abhiyan**, Department of Education, is running pre-schools attached to primary schools.

Scheme of Assistance to Homes for Children (Shishu Greh) to Promote in-country Adoption: One of the primary objectives of the scheme is to provide institutional support within the country for care and protection of infants and children up to 6 years of age who are abandoned or orphaned/ destitute and for their rehabilitation through in-country adoption.

Supplementary Nutrition Programme: This Scheme aims at providing nutritious foods to the Children (0-6) years and pregnant/lactating mother in order to upgrade the level of nutrition.

Revised Integrated Child Protection Scheme: The ICPS will map child care services available at community level, Identify families at risk and children in need of care and protection through effective networking and linkages with the ICDS functionaries, Specialised Adoption Agencies (SAA), NGOs dealing with child protection issues and local bodies, viz. PRIs and Urban Local Bodies, etc.

National Health Mission services for 0-6 years: Janani Suraksha Yojana (JSY) (2005) provides for safe motherhood intervention to increase institutional delivery through demand-side financing and conditional cash transfer. It is implemented in all States and Union Territories (UTs) with a special focus on Low-Performing States.

Integrated Management of Neonatal and Childhood Illnesses (IMNCI): This has been initiated at the community level along with the Facility based Management of Neonatal and Childhood Illnesses (F-IMNCI) at health facilities (2007). The aim of these initiatives is to focus on greater attention on neonatal care and identify specific actions taken to promote neonatal health and survival as well as standard case management of major causes of neonatal and childhood morbidity and mortality. Operationalised in more than 500 districts.

Navjat Shishu Suraksha Karyakram (NSSK) (2009) Basic newborn care and resuscitation training programme.

Janani Shishu Suraksha Karyakram (JSSK) (2011) Zero out-of-pocket expenditure for maternal and infant health services through free healthcare and referral transport entitlement Implemented in all States and UTs, assured service package benefits extended to sick children up to age one.

Facility Based Newborn Care (FBNC) (2011) Newborn care facilities at various levels of public health services that include *Newborn Care Corners* (NBCCs) at all points of childbirth to provide immediate care; *Newborn Stabilization Units* (NBSUs) at CHC/FRUs for management of selected conditions and to stabilise sick newborns before referral to higher centres; and *Special Newborn Care Units* (SNCUs) at district/sub-district hospitals to care for sick newborns (all types of care except assisted ventilation and major surgeries).

Home Based Newborn Care (HBNC) (2011) Provision of essential newborn care to all new-borns, special care of preterm and low-birth-weight newborns; early detection of illness followed by referral; and support to family for adoption of healthy practices by ASHA worker implemented in all States and UTs.

Rashtriya Bal Swasthya Karyakram (RBSK) (2013) Screening of children with birth defects, diseases, deficiencies, and developmental delays (including disabilities)

Suggestions for Commissions' Intervention

- Monitor the implementation of the various components of the ICDS such as ensuring access for every child up to 6 years of age, increasing the number of Anganwadis and ensuring functioning ICDS in all SC/ST hamlets and slum areas and provision of minimum space for ECCE in every AWC, flexibility in timing, training of AWWs to help them understand the basic educational needs of children and securing convergence between SSA and ICDS functionaries.

- Monitor government efforts to bring about coordination of policies and programmes for the protection of rights of children below 6 years including those of migrant families, families living on the streets etc.
- Monitor government's efforts on institutionalising 'community care models' to take ownership of local children with the support of human resources like AWWs, ASHA along with help of local SHGs.
- Monitor government's efforts to publicise information on schemes and subsidies for various sections of society to facilitate easy access.
- Monitor availability of vaccines and logistic support for immunisation at all delivery points, mainly at CHCs/PHCs and district level hospitals.
- Recommend tracking of partially vaccinated or unvaccinated children as per UIP schedule and ensure immunisation with special focus on migrant/in street situations/disabled children.
- Facilitate training of ICDS functionaries including ANMs, ASHAs, AWWs through State Governments.
- Recommend for digital database of AWCs which may enable to monitor real time data on services provided.
- Monitor establishment of fully Facility-based new born care Units (Newborn Care Corner, NBSU, Special New born Care Units) as per Government norms
- Conduct periodic review and evaluation of quality of care and services available at all health care centres and hospitals across the country.
- Promote Public advocacy programmes for ensuring proper care, adequate health and nutrition support of child, especially girl child.
- Recommend availability of qualified Mental Health professionals and treatment facilities at all PHCs/CHCs and district hospitals.
- Ensure availability of functional child friendly toilets at all AWCs and in all schools.
- Disseminate information for community awareness of basic health education on clean water, sanitation, food, nutrition and hygiene, and proper waste and sewage disposal.

Children in Beggary

Child beggary, may be defined as the engagement of children in seeking alms on the streets, traffic signals, at religious places, public gardens, railway stations and market places. It may be out of their own volition or necessity as in the case of orphans or those who run away from abusive or neglected homes and could be engaged in begging alone or in groups. Many children are sold or kidnapped or even loaned by their parents or guardians and fall victims of trafficking and are forced into begging. Children of migrant workers are also found begging to supplement the family income. Many other children may adopt the way of life of their parents and become beggars or members of organised gangs of beggars.

In spite of protective laws being in place, child beggary exists in India. They continue to be seen in prominent locations due to the failure of the State to implement preventive and protective interventions for children and for lack of enforcement of punitive measures to punish the perpetrators who use children for begging. High Courts have had to intervene on various occasions to protect the rights of children engaged in beggary.

Related Policies and Laws

International Laws

The United Nations Convention on the Rights of the Child (UNCRC)

Article 19 of the UNCRC requires all signatory governments to take appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Article 24(3) of the UNCRC requires the States to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

It further elaborates that such measures should include effective procedures for establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 32 (1) of the UNCRC: ‘States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development’.

Article 35 of the UNCRC requires all signatory governments to take appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36 of the UNCRC states that, ‘States Parties shall protect the child against all other forms of exploitation prejudicial to any aspect of the child’s welfare.’

Article 39 of the UNCRC further requires all states parties to take appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; in an environment which fosters the health, self-respect and dignity of the child.

National Laws

Constitution of India: Article 23, provides that trafficking in human beings and begging and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Indian Penal Code: Section 363 of the IPC penalises those who kidnap a child for the purpose of begging.

Section 363A criminalises kidnapping or maiming a minor for the purpose of begging.

Section 367 penalises kidnapping or abduction to subject a person to slavery.

Right to Free and Compulsory Education Act, 2009: All children between the age of 6-14 years shall be in school and the Sarva Shiksha Abhiyan has a special programme for drop outs and out of school children. Child beggars would benefit tremendously if included as a special intervention group.

JJ Act, 2015: Under Section 2, the definition of child in need of care and protection (CNCP) includes a ‘child who is found working in contravention of labour laws in force, or is found begging, or living on the street’. Section 76 of the JJ Act, 2015 additionally states that any person who uses a child to beg is liable for imprisonment up to five years and a fine of rupees one lakh. Amputation or maiming a child for the purpose of begging invites rigorous imprisonment for a term not less than seven years which may extend up to ten years, and shall also be liable to fine of five lakh rupees. Protection and rehabilitation of children found begging comes under the jurisdiction of Child Welfare Committees.

The Commissions for Protection of Child Rights Act, 2005: Section 1 (d) empowers the Commission to examine all factors that inhibit the enjoyment of rights of children including those maltreated, tortured and exploited.

The National Policy for Children, 2013: The Policy lays down that the State shall provide adequate services towards children, both before and after birth and during the growing stages for their full physical, mental and social development. In this regard, one can take the support of provisions which state that children who are socially handicapped, who have become delinquent or have been forced to take to begging or are otherwise in distress shall be provided facilities of education, training and rehabilitation and will be helped to become useful citizens.

In addition in Section 4.11, the State commits to taking special protection measures to secure the rights and entitlements of children in need of special protection, characterised by their specific social, economic and geo-political situations, including their need for rehabilitation and reintegration, in particular but not limited to ... children forced into begging, ...and any other category of children requiring care and protection.

Related Schemes

Integrated Child Protection Scheme: ICPS brings together multiple existing child protection schemes of the Ministry under one comprehensive umbrella, and integrates additional interventions for protecting children and preventing harm. The purpose of the scheme is to reduce the vulnerability among children and counter situations that lead to abuse, neglect, exploitation, etc.

Suggestions for Commissions' Intervention

- Seek reports from the State on the implementation of the RTE Act in respect of children engaged in beggary and rehabilitation programmes and outcomes for children rescued from child beggary.
- Recommend that all CWOs/JWOs and SJPU are trained to have adequate aptitude, sensitivity and appropriate orientation in reigning in the practice of child beggary.

Children in Poverty

Children living in poverty are those who experience deprivation of the material, spiritual and emotional resources needed to survive, develop and thrive, leaving them unable to enjoy their rights, achieve their full potential or participate as full

and equal members of society. Poverty of children is associated with adult poverty, unemployment, disabilities, discrimination, lack of education of parents which restricts children's opportunities to good health and nutrition, education, housing etc.

Related Policies and Laws

Constitutional Provisions: Chapter III - Fundamental Rights under the Constitution of India empowers the State to provide special protective measures for marginalised communities who fall within the definition of Scheduled Caste, Scheduled Tribes, Backward Classes and Minorities to raise them out of poverty. Some of the laws, policies and schemes to realise the constitutional obligations are listed below:

JJ Act, 2015: Under the Act, such children shall be considered as 'children in need of care and protection' and as such, are eligible for all the entitlements available for this category of children under this act.

National Policy for Children, 2013: The Policy enumerates a policy framework for catering to every aspect of the developmental needs and for prioritising education for this disadvantaged group and provides for creating an enabling environment through legislative measures, policy and provisions.

Related Schemes

Revised Integrated Child Protection Scheme: This has been introduced to provide safe and secure environment for overall development of children in difficult circumstances. Under the Scheme, there is provision for setting up of 'Open Shelters' for children in need of care and protection, including the street children, in urban and semi-urban areas. It also, provides for the setting up of District Child Protection Societies by the State Governments/UT Administrations in every district of the State.

The ICDS programme offers six services to 0-6 year children at the AWC. The AWC offers early stimulation programme for children under three to foster their holistic development, as well as supports the health system in early detection of delayed developmental milestones and early intervention for children with disabilities.

School health programme (SHP):⁴⁵ It is the only public sector programme specifically focused on school age children. Its main focus is to address the health needs of children, both physical and mental, and in addition, it provides for nutrition interventions, physical activities and counselling.

Bhagyasri Kalyan Bima Yojana of the MWCD: Part of the money is given to the girl child at birth or in scholarships and part is put aside for paying the premium on an insurance policy in her name. Under this scheme, the girl child can withdraw the scholarship amount and interest when she turns 18 and is unmarried.

Janani Suraksha Yojana (JSY) of the Ministry of Health and Family Welfare: Aims at reducing maternal and infant mortality rates and increasing institutional deliveries in below poverty line (BPL) families, covering all pregnant women above 19 years of age and up to two live births. It provides conditional cash transfers to women giving birth in health facilities and is linked to prenatal, in-hospital, and post-natal services.

Suggestions for Commissions' Intervention

- Monitor early childhood care and development services to children under the ICDS and other schemes which would guarantee them access to adequate nutrition, healthcare and pre-school education.
- Recommend to government to provide appropriate support and facilitate easy access to all poverty alleviation programmes and social security schemes to BPL families and marginalised migrant families and their children to protect and promote their right to survival, development and protection. Seek regular monitoring reports of these recommendations from the DCPU.
- Monitor implementation of the JJ Act 2015 and the ICPS services to ensure that it is made universally available to protect the well-being of children from poor socio-economic backgrounds and enables them to access these services.
- Monitor the government's efforts to reunite children housed in institutions and other categories of vulnerable children who are separated from families to reunite with their families by linking them to all poverty alleviation schemes and supportive services.
- Recommend food safety net and special plans for children of economically weaker section, children of migrant workers etc.

Children in Prisons

Due to failures in the criminal justice system occasionally children are inadvertently lodged in prison mostly due to errors in recording their age. Often at times no documentary proof is available regarding the age of an alleged offender and so even children get lodged in jails with adult offenders.

Section 8 (3) (m) of the JJ Act, 2015 provides that the JJBs to conduct regular inspection of jails meant for adults to check if any child is lodged in such jails and take immediate measures for transfer of such child to the observation home.

Related Policies and Laws

The Hon'ble Delhi High Court in its judgment dated 11.05.2012 in Writ Petition (Civil) No. 8889/2011 issued comprehensive guidelines⁴⁶ for dealing with children in prisons who are suspected to be under the age of 18 years and hence, beneficiaries of the JJ Act. The Guidelines have instructed NCPCR to constitute a panel of at least ten (10) persons to make visits to various jails in Delhi in order to find out if beneficiaries of the JJ Act are lodged in such jails. Reports of such visits along with the list of probable children in conflict with the law are to be forwarded to the Member Secretary of Delhi State Legal Services Authority, Jail Authorities and the JJBs concerned for further action.

MWCD, Government of India has constituted a Committee under the Chairmanship of Delhi SCPCR to draft a Model Manual for Juveniles in Custody in Observation Home/ Special Home/Place of Safety as per the Juvenile Justice (Care and Protection of Children) Act, 2015. The Model Manual has been prepared and ready for circulation to all concerned.

JJ Act, 2015: The Act envisages the concept of 'children in conflict with law' for children involved in transgression of the law. It provides a special procedure for their prosecution and establishes authorities under the Act for the same. It also, makes provision for their proper rehabilitation. It ensures that under no circumstances children in conflict with law are sent to jails. Even while it carves out a different process for children in conflict with the law aged 16 to 18 years and booked for heinous offences, while being tried and sentenced as adults, they cannot be sent to a jail till they attain the age of 21 years.

The Commission for Protection of Child Rights Act, 2005 Section 13 (i) vests powers in the National Commission and State Commission to inspect or cause to be inspected any juvenile custodial home, or any other place of residence or institution meant for children, under the control of the Central Government or any State Government or any other authority, including any institution run by a social organisation; where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary.

Related Schemes

Integrated Child Protection Scheme: Revised Integrated Child Protection Scheme: The ICPS will focus its activities on children in need of care and protection as defined under the JJ Act 2015 and with children who come in contact with the law, either as victim or as a witness or due to any other circumstance.

The Hon'ble High Court of Delhi in W.P. (C) No.8889/2011 on 11.5.2012, in the matter of '**Court on its Own Motion Vs Department of Women and Child Development & Ors, W.P. (C) No.8889/2011' (Appendix-I)**, issued directions for constituting a Panel for inspection of the Jails in Delhi for identification of probable juvenile in these Jails who could be beneficiaries of the Juvenile Justice Act. Chairperson, NCPCR wrote a letter to Chief Secretaries of all States/Union Territories on 29 October 2015 to review the position in their States constituting Panel of Lawyers and Eminent Social Activists to inspect Central/District Jails to identify the probable juveniles lodged therein. Based on the recommendation of such Panel of Experts, the cases of probable juveniles may be examined/verified from the available records/and or through medical test by the competent authority as per procedure prescribed under the Juvenile Justice Act. States have been requested to send quarterly reports to NCPCR vide letters dated 14 March 2016 and 28 October 2016. As a follow up, State SCPCRs may monitor the progress on this issue in their respective States and send report to NCPCR regularly to NCPCR.

Suggestions for Commissions' Intervention

- The SCPCRs to take up the issue with Prison Departments of State/UT to initiate efforts to undertake age verification for all youth inmates sent to jails on monthly basis and to work in close collaboration with the State Legal Services authorities to undertake age verification.
- Seek monthly returns from government on children transferred from prisons to Observation Homes and details of rehabilitation care plans worked out for every juvenile.
- Seek the cooperation of NALSA and SSLA for issue of appropriate compensation packages by the State to children wrongly incarcerated and forced to live in jails.

Children in Contact with Railways

A large number of vulnerable children come in contact with the Indian Railways. These children reach the streets of cities and towns through the railway network as trains ensure anonymity, easy and fast transportation from home locations where they may suffer poverty, violence, abuse and neglect. Children also enter trains as abandoned or trafficked children. Homeless children living on railway platforms and working in and around railway platforms are also included in this category.

Busy railway stations like Mumbai, Kolkata, Chennai, Bangalore, Delhi and other junctions are the most popular arrival destinations for children who find it easier

to eke out a living for survival on these or on streets besides them. They often fall victim to unscrupulous elements looking to prey on lonely, desperate, children. Such homeless children are prone to recruitment by traffickers most of whom are middle men for employers seeking cheap labour. Exploitative conditions also lead many helpless children to resort to drugs and substance abuse, falling victim to sexual abuse and getting involved in petty crimes. Younger children and girls particularly also become targets of bullying and abuse by older children.

Related Policies and Laws

Safeguarding the Rights of Children in Contact With Railways

JJ Act, 2015: These children are within the ambit of ‘children in need of care and protection’ as envisaged under section 2(14) of the Act, given their vulnerable status. As such, it is incumbent on the Railway Protection Force to initiate their rehabilitation according to the mandate of the legislation.

Standard Operating Procedure: has been formulated by Ministry of Railways with the support of NCPCR and MWCD as an exhaustive mechanism to ensure that there is a comprehensive mandate as to the manner of recognition of child in railways and rescue, rehabilitation, etc. It envisages a multi-pronged strategy with the involvement of all the major stakeholders like Railway authorities including GRP/RPF, CWCs and NGOs. Child Welfare Committees at Railway, Travel Ticket Examiner (TTE), Station Master to provide necessary assistance and services when children in need of care and protection come in their contact/ with them and enable them to prevent child vulnerability to abuse, neglect and exploitation.

National Policy for Children, 2013: The Policy enumerates a policy framework for prioritising education for this disadvantaged group by ensuring that they are tracked, rescued, rehabilitated and has access to education.

Related Schemes

Integrated Programme for Street Children: The main objective is to prevent destitution of children and facilitate their withdrawal from the streets. The programme provides for shelter, nutrition, healthcare, education, etc. The aim is to create awareness and provide support to build capacity of the Government and NGOs to realise the rights of children as enshrined in the UN Convention and the JJ Act, 2015.

The Revised Integrated Child Protection Scheme an initiative by the MWCD aims at building a protective environment for vulnerable children through government-civil society partnership. In times of natural disasters, the ICPS would play a key role in strengthening structures, enhancing capacities at all levels as well as ensure appropriate inter-sectoral response to the needs of children affected.

Suggestions for Commissions' Intervention

- Monitoring of SOP for care and protection of children in contact with railways.
- Creating awareness programmes.
- Recommend incorporating the Child Rights, the JJ Act, 2015 and SOP for care and protection of children in contact with railways in syllabus for Railway Police Force.

Children with Disability

Children affected by physical, cognitive, mental, emotional, sensory, or developmental impairments independently or in tandem are generally categorised as 'disabled children'. Persons with disability including children are often subject to different forms of social stigma like alienation, ridicule and more likely to fall victim to inhuman and cruel treatment, sexual exploitation etc. that further, impedes their development. It is worse for children of impoverished families, who are compelled to seek charity or take to full time begging as they can arouse sympathy and compassion.

Early childhood care and intervention is said to minimise the degree of any disability but for lack of specialised medical services and economic and physical barriers, especially true for the rural poor. Children with disabilities often do not have access to the educational facilities and to rehabilitation services.

Related Policies and Laws

International Laws

Convention on the Rights of the Child, Article 23 provides that States Parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community. It also specifies that States Parties recognise the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

Recognising the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services,

rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

Convention on the Rights of Disabled Persons, Article 7 Children with disabilities

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.
2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.
3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realise that right.

National Laws and Policies

Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995: The Act provides for both preventive and promotional aspects of rehabilitation including prevention and early detection of disabilities, early intervention and education for children with disabilities. The Act envisages several other entitlements for persons with disabilities for their integration into mainstream society. The Office of the Chief Commissioner for Persons with Disabilities has been set up under Section 57 of the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 and has been mandated to take steps to safeguard the rights of persons with disabilities.

National Policy for Persons with Disabilities, 2006: This policy makes a comprehensive analysis of the entitlements available to a person with disability, with special emphasis on their education, empowerment and reintegration into mainstream society. 'Children with disabilities' is one of the twelve focus areas of the Policy and notes that the Government shall try to ensure right to care, protection and security for children.

The Right of Children to Free and Compulsory Education Act, 2009: safeguards the rights of the children belonging to the disadvantaged groups and the weaker sections, protect them from any kind of discrimination and ensure their completion of elementary education. Right to Free and Compulsory Education (Amendment) Act (2012), mandates inclusion of children with disabilities in the definition of children belonging to disadvantaged group in the Section 2(d) of the RTE Act.

The National Trust for the Welfare of Persons with Autism, Cerebral Palsy Mental Retardation and Multiple Disabilities Act, 1999: The Act provides for the empowering of persons with disability and the National Trust so constituted runs several schemes for persons with disability. At the district level, under this Act, a Local Level Committee under the District Collector/Deputy Commissioner is constituted for the welfare of persons with disability. Ministry of SJE supports the functioning of five Composite Rehabilitation Centres, four Regional Rehabilitation Centres and 120 District Disability Rehabilitation Centres (DDRCs) providing various kinds of rehabilitation services to persons with disabilities.

National Policy for Children 2013: The Policy provides services for children with special needs in regular schools and to ensure that these are inclusive and have all the facilities for trained teachers and special educators, appropriate pedagogy and educational and material, barrier-free access for mobility, functional toilets and co-curricular activities towards the development of child's fullest potential and autonomy and sense of dignity and self-worth.

It also affirms that the State shall take all necessary measures to prevent disabilities, both mental and physical and provide services for early detection, treatment and management, including interventions to minimise and prevent further disabilities, prevent discrimination faced by children with disabilities (mental and physical) and provide services for rehabilitation and social support.

Related Schemes

Scheme for Rehabilitation of Disabled Person, 1990: This scheme is made to provide special rehabilitation for a person with disability. The delivery of services under the programme is bottom-up approach i.e., Village- Block-District-State. There is a District Referral Centre manned by Indian Red Cross Society, Assam State Branch and the Centre deals with those cases referred from the villages and Blocks. Issue of aids and appliance like Hearing aids, Wheel Chair etc. is done by the Department through the Red Cross Society. These State Referral Centres deal with cases referred by the District Rehabilitation Centre.

Rashtriya Bal Swasthya Karyakram (RBSK), a scheme of the Ministry of Health and Family Welfare, covers 0-18 year old children, providing for early identification, referral of birth defects and follow-up to detect delays (Screening for 4Ds, defects at birth, deficiencies, diseases, and developmental delays and disabilities -30 conditions identified). The services aim to cover children of 0-6 years of age in rural areas and urban slums in addition to children enrolled in classes 1st to 12th in government and government- aided schools.

The Integrated Child Development Services (ICDS) programme offers six services to 0-6 year children at the AWC. The AWC offers early stimulation programme for children under three to foster their holistic development, as well as supports the health system in early detection of delayed developmental milestones and early intervention for children with disabilities.

Sarva Shiksha Abhiyan: Under this scheme, a continuum of educational options, learning aids and tools, mobility assistance, support services etc. are being made available to students with disabilities. This includes education through an open learning system and open schools, alternative schooling, distance education, special schools, wherever necessary home based education, itinerant teacher model, remedial teaching, part time classes, Community Based Rehabilitation (CBR) and vocational education.

The Inclusive Education of Disabled at Secondary Stage (IEDSS) scheme under the Rashtriya Madhyamik Shiksha Abhiyan (RMSA) provides education and facilities to children with one or more disabilities in the age group of 14 to 18 years, who have passed out of elementary schools and are studying in the secondary stage in government, local body or government-aided schools.

Suggestions for Commissions' Intervention

- Concerted effort must be made by Commissions in collaboration with the Disability Commissioner to closely monitor the implementation of laws, policies and schemes which these children are entitled to with a special focus on rural areas.

Migrant Children

People migrate for various reasons and this could be temporary, seasonal or circulatory migration. The indicators used to determine migration are change from birthplace and change of last usual place of residence. In India, children accompanying their parents in the 0-14 year age-group are estimated to constitute about one-third of the total migrant population. With the migration of parents for economic activities, children are adversely affected in terms of education, health, nutrition and other basic amenities.

Child migration however, is also characterised largely by distress or forced migration with the target group being children in poverty and those exposed to several other vulnerabilities. At the source of migration when migrant parents leave behind children, their vulnerabilities increase with children falling victims of trafficking, being forced into sex industry, etc.

Migration has differential impacts on children of different age groups, such as:

- Children of 0-6 years are deprived of health, nutrition and pre-school education. They lack birth certificate, immunisation, health facilities, resulting in acute malnourishment, sickness and mortality. They also lack access to anganwadis, crèche, safe drinking water, sanitation, etc.
- Children of 6-14 years are increasingly school dropouts having no access to schools at the place where their parents work and denial of schooling leads to engagement of children in various other activities that includes work on site with the members of the family causing health hazards, exploitation and abuse.
- Children of 14-18 years are out-of-school, constitute an active labour force and are exposed to risks of drug abuse and sexual exploitation. The adolescent girls are vulnerable to sexual exploitation and get pushed into the sex trade; fall victims to early marriage, early pregnancies, face the risk of contracting HIV/AIDS, sexually transmitted diseases and other health problems.

Related Policies and Laws

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979: Under this, the registration of establishments employing inter-state migrant workmen has been made mandatory in addition to issuance of license to contractors. This applies to every establishment in which five or more inter-state migrant are or were employed on any day of the preceding twelve months. The legislation is solely meant to address exploitation and promote the welfare of migrant workmen and regulate the practice.

Right of Children to Free and Compulsory Education Act, 2009: Migrant children fall within the mandate of this Act and the State must provide access to education in their neighbourhood.

JJ Act, 2015: The jurisdiction of this Act becomes operative when the person migrating alone or with family is below 18 years of age. If a child below 14 years is working in a hazardous industry the employer is punishable. Exploitation of children under the age of 18 years also carries strictures. All migrant children are eligible for care, protection and rehabilitation support when presented before the CWC.

Bonded Labour System (Abolition) Act, 1976: According to the Act, all the migrant workers fall under the Bonded Labour Act, as often they receive little advance, enter into an agreement, forced to give labour and paid less than prescribed wage rate. The worst affected, as highlighted, are children who are victims of domestic distress migration.

The Child Labour (Prohibition and Regulation) Amendment Act, 2016: As per provisions of Section 2 of the Act, it prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto. The Act provides power to State governments to make rules with reference to the health and safety of children, wherever their employment is permitted.

Protection of Children from Sexual Offences Act, 2012 and the Criminal Law Amendment Act, 2013 intend to reduce the vulnerabilities of children, particularly those migrant and trafficked children who are engaged as child labour or sexually exploited.

National Policy on Child Labour, 1987: The policy seeks to adopt a gradual and sequential approach with a focus on rehabilitation of migrant children, children of migrant workers and those working in hazardous industries. In 1988, this led to the National Child Labour Project (NCLP) initiative.

Related Schemes

Integrated Child Protection Scheme: aims to provide preventive, statutory and care and rehabilitation services for the overall development of children in need of care and protection, including children in difficult circumstances, such as children of migrant population. The scheme endeavours to bring services closer to vulnerable children and families for increased access.

Survival and ECCE: The Hon'ble Supreme Court has ordered the universal coverage of the six components of ICDS. Consequently the MWCD issued a circular (on 13 April 2011) to extend ICDS services to children of migrant labourers and temporary residents through setting up of mini-anganwadis even at the scattered habitats of migrant workers.

Sarva Shiksha Abhiyan (SSA): The SSA scheme of the Ministry of Human Resource Development envisages specialised intervention for children of migrant population. SSA has made provisions for the 'Urban Deprived Children' who include children living in slums and resettlement colonies, child labourers, street & working children, children of sex workers, *children of migrant workers*, children in various childcare institutions, etc. There are provisions of free school textbooks to girls & boys of the disadvantaged urban children, special schools like mobile schools, back to school camp, short term schools at the construction sites and facilities for girls, like residential schools, shelter home and toilets. Out-of-School children are entitled for seasonal hostels/residential camps to retain children in the sending areas during the period of migration, worksites schools at the location where migrant families

are engaged and bridge courses/remedial courses with a focus on mainstreaming out of school children.

Anti-Human Trafficking Units (AHTUs): The AHTUs are being set up throughout the country to address the increasing human trafficking problem in a holistic manner. Trafficking of children could be for various reasons, but significant numbers have been trafficked to work as child labourers or in prostitution. Half of such migrant children are likely to be girls who may be trafficked into brothels or domestic servitude.

Suggestions for Commissions' Intervention

- Monitor implementation of the Sarva Shiksha Abhiyan by which envisages specialised intervention for children of migrant population through setting up of tent schools, mobile schools, induction of language tutors, special admission drive and community mobilisation programme.
- Recommend to MHRD and State governments and UT Administration to take following measures:
 - ◆ Recommend running bridge courses at work site which impart education in mother tongue and bring easily accessible aids enrolment. Necessary training to the teachers and evaluating the learning outcome at the appropriate intervals must be part of the intervention to achieve desired results.
 - ◆ Monitor directives of Supreme Court direction covering children of migrant workers and put the onus on States.
 - ◆ Map all habitats including labour work sites with children below 6 years and provide access to ICDS services such as supplementary nutrition, health care, immunisation and pre-school education to children.
- Recommend setting up of Assistance Centres in places where there is high concentration of migrant labour households to facilitate migrant households to access information and services related to their basic needs and right to education, health care and food security for themselves and their families and to provide adequate publicity so that information about the services is brought to notice of the concerned workmen and eligible applicants.

- Recommend formulation of Action Plan for protection of migrant children.
- Recommend to the State to widen the scope of the ICPS which promotes protective measures for children and provide open shelters and shelter homes, sponsorship support etc. in locations which can be readily accessed by children of migrant.
- Develop database of such children and Mapping of children of migrant workers and recommend Ensure coverage of migrant families under UID;
- Ensure provision of early childcare services (Crèches for 0 - 3 and anganwadi services for all migrant children between 0-6 category) and setting up of play-schools for the migrant children;
- Recommend provision of mobile health units in remote construction worksites and Hospital on Wheels visiting for outreach on these sites;
- Ensure Child-friendly environment in worksites / labour camps and residential areas; For more information on interventions by NCPCR on migration refer to 'Monitoring the Rights of Vulnerable Migrant Children with Trafficking Point of View' at: www.ncpcr.gov.in/view_file.php?fld=463

Natural Disasters

Natural disasters are major adverse events resulting from natural hazards or processes of the Earth causing loss of life or property as well as significant economic damage in its wake such as floods, droughts, volcanic eruptions, earthquakes, etc. Disasters are often a result of the combination of: the exposure to a hazard; the conditions of vulnerability that are present; and insufficient capacity or measures to reduce or cope with the potential negative consequences. The severity of such disasters however depends upon the density of population in the area of its occurrence and the population's ability to recover from the catastrophe. The most adversely affected by the calamities caused by natural disasters are women and children as the effects are clearly multi-dimensional in nature affecting children psychologically, physically and even economically by robbing them of what might have been a normal upbringing. The children surviving such disasters in most cases are subjected to displacement which could even mean the loss of protective environment that family and community provides.

Related Policies and Laws and Schemes

A comprehensive approach to reduce disaster risks is set out in the United Nations-endorsed 'Sendai Framework for Action' 2015-30, which is adopted by all member states. The Sendai Framework is a voluntary, non-binding agreement which recognises that the State has the primary role to reduce disaster risk but that responsibility should be shared with other stakeholders including local government, the private sector and other stakeholders. It has seven targets and four key priorities, namely:

Priority 1. Understanding disaster risk: Disaster risk management should be based on an understanding of disaster risk in all its dimensions of vulnerability, capacity, exposure of persons and assets, hazard characteristics and the environment.

Priority 2. Strengthening disaster risk governance to manage disaster risk: Disaster risk governance at the national, regional and global levels is very important for prevention, mitigation, preparedness, response, recovery, and rehabilitation

Priority 3. Investing in disaster risk reduction for resilience: Public and private investment in disaster risk prevention and reduction.

Priority 4. Enhancing disaster preparedness for effective response and to 'Build Back Better' in recovery, rehabilitation and reconstruction

National Disaster Management Guidelines — School Safety Policy, February 2016: Sets out the priority of safe schools through safety of building, its environment and participation of students, teachers and other staff in preparation of school safety plan for response and preparedness for disasters.

JJ Act 2015: Children separated from their families, left homeless, injured etc. would fall within the category of children in need of care and protection and CWCs need to pro-actively respond to their needs.

The Disaster Management Act 2005 envisages the creation of National Disaster Management Authority (NDMA) and State Disaster Management Authorities (SDMA) to spearhead and implement a holistic and integrated approach to Disaster Management in India. NDMA, as the apex body, is mandated to lay down the policies, plans and guidelines which embrace children too.

National Policy for Children under Section 4.11 commits to taking special protection measures to secure the rights and entitlements of children affected by natural disasters characterised by their specific social, economic and geopolitical situations including their need for rehabilitation and reintegration.

Related Schemes

The Revised Integrated Child Protection Scheme an initiative by the MWCD aims at building a protective environment for vulnerable children through government-civil society partnership. In times of natural disasters, the ICPS would play a key role in strengthening structures, enhancing capacities at all levels as well as ensuring appropriate inter-sectoral response to the needs of children affected.

Suggestions for Commissions' Intervention

- Anticipation of risk: Seek update from mandated institutions such as Ministry of Home Affairs (MHA), MHRD, National Disaster Management Authority (NDMA), State Disaster Management Authority (SDMA), State Government etc.) on the actions taken to improve safety and security of children in schools, anganwadis, health facilities, urban local bodies etc.
- Bring together the above mentioned mandated institutions to evolve right fit framework to action to address any emerging risk.
- National guidelines prepared by (NDMA) need to be followed in the event of natural calamities/disasters.
- In times of natural disasters, oversee the monitoring by State of its responsibilities such as: Arranging safe temporary shelter, medical assistance, child friendly temporary learning spaces during disaster management operations which are child friendly and rely on family based care as against institutional care arrangements.
- Maintain overseeing of the emerging risk and wellbeing issues of children impacted by disasters
- Overseeing district administration's efforts to operate an effective child tracking mechanism using appropriate software such as Child Track to locate displaced children and those missing in a particular area and restore those found to the next of kin.
- Coordinating with SJPU's and AHTU's to ensure due vigilance is maintained to prevent the trafficking of children. Credentials of all adults escorting children must be verified even at the cost of inconveniencing them to ensure the safety and effective restoration of children to families.

- Propagate best practices for replication such as the Mamta Grihas set up in Odisha during the super cyclone which avoided uprooting children from their local environment while providing emotional support to those rendered homeless.
- Recommend identification of high risk districts and develop preparedness and response plans for ensuring delivery of health and nutrition services to pregnant women, mothers. Special plans for draught – and children during disasters – affected districts under National Food Security Act 2013.
- Ensure that District authorities must do a basic count of children affected by disaster, which may include: (a) Is disaggregated by age and gender (b) Counts disabled children and level of disability (c) Estimates the number of children out of school etc.
- Recommend that State Government should develop a community-based mental health programme based on an assessment of existing services available and need for such programmes
- Public health centres should be set up within camps, particularly where the camps are, or are likely to be, long-term. In the interim, district authorities should organise mobile health camps to ensure that essential health services such as immunisation are not interrupted.
- Ensure availability of adequate and affordable nutritious food as per the provisions of National Food Security Act, 2013, for children affected in disasters.

Sex Determination and Sex Selective Abortion

Sex Determination and Sex-Selective abortion involve the pre-mature destruction of the foetus while still in the mother's womb or preventing conception of the female child. Infanticide or infant homicide is the intentional killing of children below the age of 12 months. Sex determination, sex-selective abortion and female infanticide which are prevalent in India may be defined as the act of deliberately eliminating baby girls due to the preference for a male child before conception, during pregnancy or after birth.

Related Policies and Laws

Constitution of India - Article 15(1)(d) prohibits discrimination against any citizens on the ground only of sex of a person. **Article 21** confers on every person the right to life and personal liberty. **Article 23 and 24** cumulatively provides for rights against the exploitation of all citizens and non-citizens.

Indian Penal Code, 1860: Sections 312-316 deal with miscarriage and death of an unborn child and depending on the severity and intention with which the crime is committed, the penalties range from seven years to life imprisonment for fourteen years and fine. **Section 318** states that concealment of birth by secret disposal of the dead body amounts to culpable homicide.

Medical Termination of Pregnancy Act, 1971 - It states the conditions under which a pregnancy can be ended or aborted, the persons who are qualified to conduct the abortion and the place of implementation. Abortions can be done till 20 weeks of pregnancy but an opinion of a second doctor is necessary between 12-20 weeks.

JJ Act, 2015- Sec. 2 (14)(iii)(b) has inherent provisions for protection of a child from anyone (whether guardian or not) 'who has threatened to kill or injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out'. The Child Welfare Committees ('CWC') are the competent authority for the care, protection, treatment and rehabilitation of these children. Additionally,

Section 75 of the Act provides for imprisonment for a term which may extend to three years, or fine of rupees one lakh, or with both for cruelty to a child (neglected in a manner likely to cause such child unnecessary mental or physical suffering) by anyone having the actual charge of, or control over the child. It also, provides punitive measures for adoption, foster care and sponsorship without following prescribed procedures.

The Pre-Conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 2003: The Act not only prohibits determination and disclosure of the sex of the foetus but also bans advertisements related to preconception and pre-natal determination of sex. All the technologies of sex determination, including the new chromosome separation technique have come under the ambit of the Act. The Act makes it mandatory for all ultrasonography units to display of a signboard that clearly indicates that detection/revelation of the sex of the foetus is illegal and provides for the setting up of various bodies such as Central Supervisory Board and State Advisory Committees along with their composition, powers and functions to monitor the implementation of the Act.

Related Schemes

Girl child protection schemes of some States, most of which are cash transfers and provide incentive for female child survival, birth registration, education of girl children and prevention of child marriage. These include Dhan Laxmi Scheme of Government of India, Ladli Scheme of Delhi, Ladli Lakshmi Yojana of Madhya Pradesh etc. The listing of schemes is not inclusive and SCPCRs may want to identify schemes being implemented in their respective States/UTs.

Indira Gandhi Matritva Sahyog Yojana (IGMSY):⁴⁷ A Conditional Maternity Benefit Scheme which provides cash transfer benefit and serves as an incentive to care for new born child.

The ‘Beti Bachao Beti Padhao’ : A major initiative to improve the Child Sex Ratio and ensure girls’ education towards ensuring gender equality – Beti Bachao Beti Padhao has been launched in January 2015. This focuses on multi-sectoral interventions in selected gender critical districts, where the Child Sex Ratio is very low. Multi-sectoral action in selected districts will focus on implementation of the PC & PNDT Act, strengthen community action, improve retention of girls in elementary and secondary schools, ensure the availability of functional toilets for girls, capacity-building and sensitisation of government officials and grass-roots functionaries. These interventions will be supplemented by a national media campaign. The Union MWCD is nodal ministry, assisted by Ministry of Health and Family Welfare, Ministry of Human Resource Development and Ministry of Information and Broadcasting in this endeavour.

Suggestions for Commissions’ Intervention

- Monitor functioning of monitoring systems technology in the implementation of the PC&PNDT Act.
- Monitor implementation of cash incentives in States for delaying the age of marriage for girls.
- Registration of pregnant women, tracking child birth, public display of trends in sex ratio at birth through hospital records and birth registration data, registering of ultrasound machines along with the names of the owners and the clinics and making public this information, banning mobile ultrasound machines as done in Maharashtra and using devices to audit use of ultrasound machines.

- Recommend to the government to undertake media campaigns to make daughters more desirable by reaching out to every sector of the society i.e. the religious and social leaders, voluntary organisations, women's groups, the media, doctors etc. and periodically review the same.
- Monitor the State's accountability for registration of scanning centres, their inspection, suspension and cancellation of licenses for violations and initiation of criminal proceedings against doctors and technicians for misuse of technology.
- Monitor the State's supervision over Medical Council's/Association's inquiries into violations by medical practitioners on misuse of technology in implementation of the PC and PNDT Act and MTP Act and enforcing stringent penalties for deviations.
- Organise State level Round Table of all stakeholders including law enforcement personnel to review the implementation of the PC & PNDT Act, challenges faced and to promote coordination of efforts to put an end to the heinous crimes against female children.
- Monitor the implementation of the PCMA 2006 in the State and recommend measures to strengthen implementation and capacity of those responsible for implementation.
- Be aware of and share best practices of people/civil society initiatives.

Substance Abuse

Substance abuse also known as drug abuse may be defined as the consumption of intoxicating psychoactive substances that has degenerating effect on the physical psychological development of the abuser. Children use drugs basically due to curiosity, peer pressure and also low perception of harm. Vulnerabilities of life such as migration, poverty, street life adds to the menace. Generally, the incidence of substance abuse among children and adolescents is higher than the general population because youth is a time for experimentation and identity formation and is also associated with individual youth lifestyles An emerging trend about child drug abusers is the use of a cocktail of drugs through injection, and often sharing the same needle, which increases their risk of HIV infection.

The effects of substance use on children and adolescents are a matter of concern. Substance use at a younger age interferes with normative age appropriate development and makes children more vulnerable to several health and psychosocial

consequences. Children in conflict with law are associated with one or other form of substance abuse, further complicating the issue of protecting them.

Related Policies and Laws

The Narcotic Drugs and Psychotropic Substances Act, 1985: It envisages a minimum term of 10 years imprisonment extendable to 20 years and fine of Rs.1 lakh extendable up to Rs. 2 lakhs for offenders. A higher punishment higher than the minimum term of imprisonment is imposed if the offence is committed in an educational institution or social service facility or in the immediate vicinity of such institution or faculty or in other place to which school children and students resort for educational, sports and social activities.

National Policy on Narcotic Drugs and Psychotropic Substances, Government of India, 2012: The policy focuses on supply reduction activities; however it has also indicated various measures for demand reduction. The policy promotes the use of various compounds (narcotic and psychotropic substances) for medical and scientific purposes while preventing their diversion from illicit sources and prohibiting illicit traffic and abuse.

National Drug Demand Reduction Policy, March 2013: This policy of the Ministry of Social Justice and Empowerment. The Policy has included strategies for curbing substance abuse among children.

National Policy for Children, 2013: It directs that the State shall take all necessary measure to provide adolescents access to information, support and services essential for their health and development, including information and support on appropriate life style and healthy choices and awareness on the ill effects of alcohol and substance abuse. It mandates the State to protect the children from the same.

Related Schemes

Scheme for prevention of alcoholism and substance (drugs) abuse, implemented by the Ministry of Social Justice and Empowerment has the broad objectives of reducing the demand for the consumption of alcohol and dependence producing substances with the thrust on preventive education programmes and on reintegration of the addicts into the mainstream of the society.

Integrated Child Protection Scheme (ICPS) aims at creating safe and secure environment for children in need of care and protection and for children in conflict, vulnerable and street children and preventing substance abuse among children.

Chacha Nehru Sehat Yojna (CNSY): In addition to other objectives, the Scheme creates awareness regarding important mental health issues like exam stress, substance/drug abuse, academic performance anxiety, peer influence etc.

Suggestions for Commissions' Intervention

- Recommend for a close working collaboration between the Ministries of SJE and WCD in translating relevant sections of the National Drug Demand Reduction Policy, 2014 related to children practicing substance abuse.
- Advocate for the administrative machinery of the State to stringently monitor the ban on sale of tobacco and related products in areas adjoining schools, colleges and other institutions with children and imposition of heavy fines for infringements.
- Recommend that the government comes out with a scheme which reaches out to children living on the streets and sensitises them against the harmful effect of drug abuse and provides access to a rehabilitation programme for those already in its grasp.
- Pursue implementation of the recommendations of NCPCR Report on Assessment of Pattern and Profile of Substance Use among Children in India, 2013.

Surrogacy

A surrogacy arrangement or surrogacy agreement is the carrying of a pregnancy for intended parents. Surrogacy equates to artificially dividing mother-hood into functional categories: genetic, biological and social. It impacts negatively on child's right to an inherent mother-infant relationship such as breastfeeding for example and often leads to commercialisation and commoditisation of the child.

Related Policies and Laws

Surrogacy in India is regulated by the **National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India**⁴⁸ of the Indian Council for Medical Research under which a child born as the result of ART procedures may seek information about donors and surrogates upon majority. The UN CRC provides certain safeguards in situations such as surrogacy and adoption which affect children. Article 6(1) states that all States that are parties to the Convention shall 'recognise that every child has the inherent right to life'.

Indian Medical Visa Regulations 2012 issued by Ministry of Home which has restricted commissioning of surrogacy arrangements in India to foreign men and women only whose marriage should have sustained for at least two years. Single parents, gay couples or unmarried parents can no longer commission surrogacy on tourist visa to India.

The Hon'ble Supreme Court of India in its W.P. (c) No. 369 of 2008 in Baby Manji Yamada Petitioner Versus Union of India & Anr, defined surrogacy and stated that any dispute in the context of surrogacy arrangements is to be looked into by the National and State Commission for Protection of Child Right.

National Policy for Children 2013 in Section 3 under Guiding Principles promises 'right to life, survival and development goes beyond the physical existence of the child and also encompasses the right to identity and nationality.'

The Surrogacy (Regulation) Bill, 2016 - India has emerged as a surrogacy hub for couples from different countries and there have been reported incidents concerning unethical practices, exploitation of surrogate mothers, abandonment of children born out of surrogacy and rackets of intermediaries importing human embryos and gametes.

Ministry of Health & Family Welfare, Government of India has drafted Surrogacy (Regulation) Bill, 2016. The Union Cabinet has given its approval for introduction of the Bill to regulate the surrogacy services in the country.

Terrorism, Communal Violence and Riots

Terrorism has no legally binding definition and is characterised by systematic use of violence to perpetrate fear into the hearts of the people. Such acts of violence are usually motivated by one's religious, political or ideological fanaticism. Communal violence refers to a situation where violence is triggered across communal or ethnic lines and the victims are usually those belonging to a particular ethnicity or community. Riots are usually a result of perceived wrongs commonly involving groups lashing out in public causing disturbance against authority, property or people. As a result, vandalism and destruction of private and public property is caused. In these situations, children are vulnerable and become victims both directly and indirectly which can result in separation from parents, break in education, mental imbalance, physical ailments and even death of children as direct fallout JJ Act, 2015 also applies to such children.

Related Policies and Laws

- Constitution of India: Article 15(3), Article 39 (e) and (f), Article 45 and Article 47 imposes a primary responsibility on the state to ensure all the rights of children are duly met and their basic human rights protected.

Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

(3) Nothing in this Article shall prevent the State from making any special provision for women and children.

Article 39: Certain principles of policy to be followed by the State: The State shall, in particular, direct its policy towards securing that:

(e) the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 45: The State shall endeavour to provide ECCE for all children until they complete the age of six years.

Article 47: Duty of the State to raise the level of nutrition and the standard of living and to improve public health. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

National Security Act, 1980 and the **Unlawful Activities (Prevention) Act, 1967** are the legislations in force to check terrorism in India.

National Policy for Children, 2013 under Section 4.11 is committed to taking special protection measures to secure the rights and entitlements of children such as those affected by communal or sectarian violence, including their need for rehabilitation and reintegration.

Suggestions for Commissions' Intervention

- Monitor the efforts of the State to support the work of JJBs and CWC in enforcing the rights of children affected by terrorism, communal violence and riots for their rehabilitation, care and development.
- Seek monitoring reports of Central and State Governments and UT administrations on implementation of schemes and programmes for rehabilitation, care and development of children affected terrorism, communal violence and riots.
- Recommend that district administrations are accorded flexibility to innovate and modify the relevant scheme/programme and allocate funds accordingly to address without delay the concerns of children affected in the affected areas.

Child Online Protection

Digital technologies offer significant developmental and educational benefits for children. However, the growing access and use of ICT by children also increases their exposure to potential risks of online abuse and exploitation. Cyber offences against children are spreading and diversifying as new methods are used to harass, abuse and exploit children. In many instances, children are also online offenders. Digital technologies provide new avenues to reinforce and spread existing social and cultural norms, as well as to mediate virtual social contexts and relationships. Offline forms of crime and violence against children are finding new forms of expression in the online world and their effects on children are amplified. In many cases offline and online violence are interrelated, with online abuse also including offline components. Non-contact abuse can be harmful to children and can facilitate the transition to contact abuse. Being able to stay anonymous online and impersonate others may embolden people into offensive and criminal acts and lower the deterrent potential of laws.

Forms of child online abuse and exploitation include:

Cyber bullying: emotional harassment, defamation and social exposure, intimidation, social exclusion; *Online sexual abuse*: distribution of sexually explicit and violent content, sexual harassment; *Online sexual exploitation*: production, distribution and use of child sexual abuse material (CSAM) (child pornography), 'sextortion', 'revenge pornography'; *Cyber extremism*: ideological indoctrination and recruitment, threats of extreme violence; *Online commercial fraud*: identity theft, phishing, hacking, financial fraud; *Habit formation and online enticement to illegal behaviours*: access to

alcohol, cheating, plagiarism, gambling, drug trafficking, sexting and self-exposure; *Grooming*: preparing a child, significant adults and the environment for sexual abuse and exploitation or ideological manipulation.

Related Policies and Laws

International Laws

Convention on the Rights of the Child (1989)

The Convention on the Rights of the Child, provides a clear set of entitlements and obligations that must be applied to frame understanding of children's rights in the context of sexual abuse and exploitation in the online/offline environment. A key element of the Convention is that it demands that the child be viewed as a holder of a comprehensive set of rights.

Governments have obligations to take action to ensure the greatest possible safety and protection for all children in every sphere of their lives. In doing so, they must reflect an appropriate balance between the right to protection and the right of children to information, participation, rehabilitation and recovery, privacy and respect for their evolving capacities, and emerging autonomy.

Article 19 provides that States take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person(s) who have care of the child.

Article 34, which requires States to protect the child from all forms of sexual exploitation and sexual abuse. States must take all appropriate national, bilateral and multilateral measures to prevent, among other things, the inducement or coercion of a child to engage in any unlawful sexual activity. No limitations are placed on the terms of engagement.

Articles 35 and 36, which require States to take appropriate unilateral, bilateral and multilateral measures to prevent the abduction, sale or trafficking of children, and to protect children against all other forms of harmful exploitation. These provisions introduce obligations to address a broad spectrum of potential abuse in the online environment.

States are also required, in **Article 39**, to take all appropriate measures to promote the physical and psychological recovery and social reintegration of a child victim of exploitation and abuse, and to do so in an environment that fosters the health, self-respect and dignity of the child.

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC, 2000).

It defines child pornography to include any representation, by any means, of a child engaged in real or simulated explicit sexual activities, or any representation of the sexual parts of a child for primarily sexual purposes, and requires States to criminalise child sexual exploitation offences, whether committed nationally or transnationally. It also requires States to adopt or strengthen, implement and disseminate provisions to prevent sexual offences against children. Of particular relevance to children who are at risk of grooming or other forms of exploitation online is an obligation on States to keep current with new technologies to ensure protection. The Protocol also clarifies that a State must exercise extraterritorial jurisdiction and introduce powers of extradition.

Finally, the OPSC elaborates on governments' responsibilities to create child-friendly legal proceedings, including protecting the rights of child victims and witnesses without prejudicing the right of the accused to a fair trial; informing child victims of their rights, and of the role and scope, timing and progress of the proceedings; and providing 'appropriate support services to child victims', including the protection of the child's privacy.

Protocol to Prevent, Suppress and Punish Trafficking against Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime ('Palermo Protocol', 2000)

The UN Trafficking Protocol contains the first detailed and internationally binding definition of 'trafficking in persons' and of child trafficking, including for the purpose of sexual exploitation. A child cannot consent to being trafficked: an apparent 'consent' is not recognised as a justification for any form of child exploitation. As the Internet has become a means to locate and lure trafficking victims, the application of this Convention and its optional protocols to the merged online/offline environment is significant.

The UN Study on Violence against Children, 2006

It recommends that governments:

'Strengthen efforts to combat the use of information technologies, including the Internet, mobile phones and electronic games, in the sexual exploitation of children and other forms of violence. Support measures to educate and advise children and their carers about the dangers involved in this context. Criminalise and appropriately penalise those who make, distribute, possess or use child pornography.'

‘Encourage the information and communication industry to devise global standards for child protection, undertake research on protective hardware and software solutions, and fund worldwide education campaigns on safe use of the new technologies.’

National Laws and Policies

The Information Technology Act, 2000, which addresses aspects related to cyberspace, and the **Information Technology (Amendment) Act, 2008 (Section 67 B)** are the main pieces of legislation concerned with online activities and cover any communication device used to transmit any text, video, audio or image. The law identifies the following as online offences against children:

Transmission and publication of obscene material, i.e., child pornographic material or otherwise adult content in electronic form; Transmission or publication of sexually explicit acts in electronic form (including any adult content video, MMS, short clip or image including ‘self-clicked images’); Transmission or publication of material depicting children in sexually explicit acts in electronic form or creating images, text, collecting, seeking, downloading, advertising, promoting or distributing content that depicts children in an obscene or sexually explicit manner; Enticing a child or children into an online relationship for sexually explicit acts or in a manner that can offend a reasonable adult, or facilitate abuse of children or recording in electronic form own abuse or that of others relating to a sexually explicit act with children. The provisions cover child pornography, grooming, sexual predation, sex webcam recording and live webcam streaming of sexual conduct; Intentionally or knowingly capturing or publishing or transmitting images of a private area of any person with or without his or her consent as it violates the privacy of the person (includes clicking a picture of oneself or a person with consent and posting it on any communication device in nude or semi-nude form); Securing access to a computer without authority, downloading or copying data (data theft), introducing a virus or causing damage to a database or programme, disrupting access, tampering with a computer in any way, charging services to another person, destroying evidence or similar activities with the aim of causing damage; Dishonestly receiving any computer resource or communication device, identity theft, i.e., making use of someone’s password or electronic signature, cheating by personation (through blogs, fake profiles, false e-mail addresses and fake images) and breach of confidentiality and privacy by sharing or making private information public.

The National Policy for Children (NPC), 2013 does not refer directly to online risks. All policies related to education, ICT or cyber security are expected to incorporate the principles of the NPC and provide children with equal opportunities for learning and empowerment, while protecting them from harm.

With specific reference to education, Section 4.6 (viii) of the NPC seeks to ‘Ensure physical safety of the child and provide safe and secure learning environment.’ Section 4.6 (xi) speaks of provision of access to ICT tools for equitable, inclusive and affordable education for all children especially in remote, tribal and hard to reach areas and Section 4.6 (xii) commits to ‘Promote safe and enjoyable engagement of children’s experiences with new technology in accordance with their age and level of maturity, even as there is respect for their own culture and roots. ‘The provisions in the education section of the NPC emphasise safety and a safe learning environment. They emphasise use of ICT and equal access to ICT by all children. These are enabling provisions for a balanced approach to providing appropriate opportunities for accessing information, participation and building safeguards for protecting children from potential risks and harm from the online environment.

Section 4.12 emphasises that ‘The State shall...enact progressive legislation, build a preventive and responsive child protection system, and promote effective enforcement of punitive legislative and administrative measures against all forms of child abuse and neglect to comprehensively address issues related to child protection.’

The National Policy of ICT in Schools, 2012 is more explicit about regulating ICT to protect children from potential risks. It recognises online risks and has provisions for regulating and monitoring Internet access. The promotion of ICT systems in schools and adult education is included in the National Education Policy.

The Policy recognises that ‘access to the Internet enhances the risk of inappropriate content reaching children and compromising privacy and identity of individuals. Evolving appropriate advisories for regulating access, monitoring Internet activity and education including privacy and security of students and teachers will be taken up at the instance of the Advisory Group. Heads of schools and teachers will be trained in appropriate security and regulatory measures’ (Section 9.9.1).

The National Cyber Security Policy, 2013 addresses the prevention, investigation and prosecution of cybercrimes, including those against children. It calls for strengthening capacities of law enforcement agencies to investigate cybercrimes and gather data to enable prosecution. Section 11 focuses on enabling effective prevention, investigation and prosecution of cybercrime and enhancement of law enforcement capabilities through appropriate legislative intervention. Section 12 emphasises the creation of a culture of cyber security and privacy enabling responsible user behaviour and actions through an effective communication and promotion strategy.

The Indecent Representation of Women (Prohibition) Act, 1986 prohibits indecent representations of women and criminalises the performances of obscene

acts and songs but does not punish the audience or those who make the person perform such acts.

The Protection of Children from Sexual Offences Act, 2012 deals with online offences against children, including child pornography and grooming. Media, hotels, photographic studios, clubs, hospitals, etc. are legally bound to report any child pornographic material. The following are offences under the law:

Sexual harassment of a child by showing any object in electronic form for pornographic purposes, or repeatedly making contact with a child digitally or threatening the child to use any form of media (Section 11 (ii), (iii) and (iv)); Using real or simulated images of a child for pornographic purposes or enticing of children for sexual gratification or pornography (Section 13(a), (b) and (c)); Using or engaging a child in any medium like print, electronic, computer or any other technology for preparing, producing, offering, transmitting, publishing, facilitating and distributing pornographic materials (Section 13(a), (b) and (c)); Storing any pornographic material in any form involving a child for commercial purposes (Section 15); Abetment to commit any of the above offences (Section 16).

Indian Penal Code

The IT Act does not have specific provisions for offences such as criminal intimidation, hate speech, and defamatory content, the provisions of the IPC are applied in cases of online offences. These include: Section 153A (hate speech or sedition), Section 419 (cheating by personation), Section 420 (cheating), Section 500 (defamatory content), Section 506 (criminal intimidation), Section 507 (criminal intimidation by anonymous communication) and Section 292 (prohibition on possession of obscene material).

- The Information Technology Act, 2000 as amended in 2008 – Section 67B prescribes punishment for those involved in **for publishing or transmitting of material depicting children in sexually explicit act, etc. in electronic form**. (first conviction with imprisonment up to five years with fine of ten lakh rupees and second or subsequent conviction with imprisonment upto seven years and fine of ten lakh rupees).
- POCSO Act 2012 has punitive measures for use of children for pornographic purposes (first conviction five years, second conviction seven years and also fine). If a person using the child for pornographic purposes commits an offence under Sections 3, 5, 7, and 9 of POCSO Act, the punishment will be (i) ten years to life imprisonment and fine, (ii) rigorous imprisonment for life and fine, (iii) six

to eight years imprisonment and fine and (iv) eight to ten years imprisonment and fine respectively.

- Sale, etc., of obscene objects to young person is punishable with three to seven years of imprisonment with fine (Section 293 of Indian Penal Code).

Related Programmes

- The POCSO e-Box launched in August 2016 by Smt. Maneka Sanjay Gandhi, Minister, MWCD, is a major initiative by NCPDR to help children report sexual abuse, including online abuse and exploitation. Tracking and follow-up of complaints and reports received through the e-Box should form a critical programme activity of NCPDR in future and requires a systematic approach and action plan. There is provision for counselling and legal advice to the victims. The advice/gist of conversation with the victims is to be recorded in the log book and submitted to the Adviser (Grievance), who in turn is supposed to submit to concerned Member. Adviser (Grievance) is required to submit the status of cases to the Chairperson, NCPDR on every Friday for her perusal.

Awareness and Educational initiatives: Several State Governments, Police Cyber Cells and Ministry of Electronic and Information Technology (MEITY) websites have educational material on cyber safety practices and awareness of online threats.

Suggestions for Commissions' Intervention

Review visits and meetings with State/UT governments and field visits undertaken to gauge measures taken to implement POCSO Act should include inquiry into issues of online abuse and exploitation in the state, specifically dealing with child pornography issues as per the Act. Alternatively, E-conference with State/UT governments could be initiated for the same purpose.

Consultations with civil society groups and other stakeholders at National, State and District level to be organised to generate a discourse and receive their feedback on issues of online threats to children and approaches to address these. Also to examine the nature of threats and understand gaps in the response mechanisms that require strengthened actions.

Review and analyse complaints received on online abuse and exploitation and have a periodic review and exchange with other Commissions on how these have been dealt with/efficiency of response/how this can be expedited/strengthened.

Children accused of cyber offences: How persons below the age of 18 years accused of cyber offences are to be treated by law in view of the proliferation of laws dealing with related issues needs to be reviewed. There is a need to develop approaches that do not criminalise children and adolescents for harmful online behaviours. Having a stakeholder dialogue and developing guidelines on this will be useful.

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NETWORKING AND PARTNERSHIPS

NETWORKING AND PARTNERSHIPS

Introduction

Commissions for Protection of Child Rights cannot work in isolation. Through networking and building partnerships with other stakeholders they can deliver solutions that will overcome the challenges children face more effectively. There is potential for beneficial cooperation in a wide spectrum of areas. This chapter deliberates upon building alliances with judicial bodies, concerned government departments, civil society, academic and research institutions and the media. It also dwells upon the development of links with other Commissions and leveraging the powers of Parliament and State/UT Legislatures and that of the Judiciary to strengthen protection measures and capacity building of the concerned institutions for children.

Networking and Partnerships

National Legal Services Authority (NALSA) and State Legal Services Authority (SLSA)

The National Legal Services Authority (NALSA)¹ has been constituted under the Legal Services Authorities Act, 1987 to provide free legal services to the weaker sections of the society and to organise Lok Adalats for amicable settlement of disputes. State and District Legal Services Authority has been constituted to give effect to the policies and directions of the NALSA to offer similar services. Persons eligible for getting free legal services include women and children; members of SC/ST; industrial workmen; victims of mass disaster, violence, flood, drought, earthquake, industrial disaster; disabled persons; person in custody and persons whose annual income does not exceed Rs.1,00,000/-.

Legal Aid to CICL

- Supreme Court has given directions to NALSA² to put in place Legal Aid Centres attached to the Juvenile Justice Board(s) in the State capitals where there is a high pendency.
- High Court of Delhi in WP (C) 8889/2011 has issued specific guidelines to NALSA and SLSAs³ to ensure legal aid is provided to probable juveniles lodged

in prisons and to facilitate the conducting of age inquiry by way of evidence and examination by Medical Board doctors within 15 days and to support complainant/victim contest the age, before JJB decides on age.

Judicial Academies

The National Judicial Academy and the State Judicial Academies⁴ have been specially set up to provide opportunities for judges to meet, to share their experiences, to gain knowledge, to update and sensitise themselves to the fast changing social needs, to improve upon the tools of judicial decision making, to develop judicial and judicious temperament, to cultivate the habit of giving fair hearing, to consider every matter soberly and to decide impartially. While the National Judicial Academy is located at Bhopal, M.P. all States have State Judicial Academies located in their capital cities of the States.

Building a working partnership with the NALSA and SLSA would provide multiple opportunities for Commissions to advance their mandate.

- Commissions could share documented case studies of apathetic approach of police and cases of police brutalities towards children with NALSA/SLSA to use in their training programmes to build capacity of police.⁵
- Commissions could build their legal team by drawing upon senior legal aid lawyers on NALSA/SLSA's panel.
- Commissions could collaborate with NALSA/SLSA for identifying and releasing juveniles under trial and wrongly lodged in jails in all States/UTs in accordance with Guidelines issued by the Delhi High Court in WP (C) 9806 of 2009.
- Commissions would jointly review with NALSA/SLSAs reasons for inordinate delay in the disbursement of interim and final compensations to child victims of sexual abuse and other violations.
- Commissions could strengthen their advocacy efforts to spread child rights literacy at the grass roots level by collaborating their efforts with that of NALSA/SLSA routine legal aid and awareness efforts.
- Joint research studies could be undertaken with NALSA/SLSA and the National and State Judicial academies to seek out remedies to expedite justice to child victims and for the rehabilitation of children involved in crime.
- Commissions could put together multi-disciplinary teams of experts and offer their support to NALSA/SLSA to resolve challenges faced by JJBs in the adjudication of cases of juveniles in conflict with the law considering their difficult antecedents and poor rehabilitation services offered by States.

- Commissions and NALSA/SLSA could jointly organise seminars for debating upon law reform or in bringing in new legislations where none exists to protect children’s inherent rights.
- Commissions could advance their monitoring responsibilities related to the functioning Children’s Courts/Special Courts by building a strong alliance with NALSA/SLSA.

Using the good offices of NALSA/SLSA, Commissions for the Protection of Child Rights could build a strong rapport with the higher judiciary which could provide opportunities for Commissions to implead in petitions related to child rights violations and bring to the notice of Courts the dismal status of children in various situations.

Civil Society Organisations and Other Institutions

The role of non-governmental organisations (NGOs) engaged in the area of children’s and women’s issues in India is well recognised. The geographic distribution of NGOs is uneven, concentrated in urban and semi-urban areas with a fewer number working in backward areas.

Childline 1098 is a 24/7 Emergency Outreach Service for children in need of care and protection and an integral part of the Integrated Child Protection Scheme of the Ministry of Women and Child Development, Government of India. It manages, coordinates and runs the service through a network of civil society partner organisations in locations across the country through civil society organisations known as Childline partners. As an emergency response mechanism for child rights violations, Childline has gained credibility for its sensitivity, commitment and for being there for children in the locations they operate from. Their engagement in rescue operations, provision of temporary shelter services, taking responsibility for producing children rescued before CWCs in the districts they are located in calls for working in tandem with government and and this has made Childline an indispensable vanguard of child protection.

Suggestions for Collaboration

- It is desirable for the Commissions to connect and collaborate with credible and accountable NGOs in the performance of their functions.
- Tapping into the expertise of NGOs to provide inputs for policy articulation and amending or drafting inputs for laws as several NGOs have significantly influenced the development of laws and policies on several important issues such as the right to education, child marriage, juvenile justice, child labour, ending corporal punishment in schools, anti-trafficking, child sexual abuse.

- Taking benefit of the expertise of NGOs with specific domain expertise such as human resources development for capacity building of government functionaries both theoretically and on the field.
- Collaborating with NGOs for conducting public hearing, social audits, workshops, seminars, conferences, publications and IEC materials.

Research and Academic Bodies

To track emerging issues in child rights and gain a deeper understanding of social and structural influences that impact situations related to children, investment in research partnerships may be desirable.

Building partnership with distinguished academic and research institutions with domain expertise to take on this task is a responsibility that Commissions may consider. Such partnership in research needs to receive vital inputs from practitioners on the ground and children themselves and would have the potential to bring out tangible improvement in situations and influence policy decision.

Research on social issues in India is being conducted by many organisations and research institutes such as the Tata Institute of Social Sciences, Centre for Policy Research and, National Law Universities, government ministries and departments, autonomous organisations such as the National Institute of Public Cooperation and Child Development, home science colleges, social work departments of universities, medical colleges, international and national voluntary organisations e The Commissions must tap the inherent strengths of these institutions to advance the scope of research outputs in the larger interest of children.

Media and Child Rights

Media is often considered to be the fourth pillar of democracy and primarily functions to disseminate information to the public that is expected to be accurate, fair, unbiased, credible and in interest of the public at large. With respect to children, the media often plays a proactive and positive role in highlighting the growth and development indicators and has the power to mould and motivate government and public response.

Media in recent times has also drawn children into reality television shows as performers and into other entertainment programmes all of which are pressure situations and anxiety inducing and known to negatively impact the development of children at the cost of their education and loss of childhood.

Media coverage sometimes becomes a cause for concern. Media trials are being conducted in cases involving children whereby photographs of victims of rape, violence, abuse and children who have committed crimes are published with their

names, address and family details which infringes upon their right to privacy and confidentiality and can have long-term consequences affecting their dignity, privacy, mental and emotional development.

Suggestions for Intervention

- Constant review of the monitoring responsibilities of various regulatory bodies regarding compliance of the media with current legislations, guidelines of the Delhi High Court and NCPCR's Guidelines on Reality Shows to secure and protect the rights of children. Also to ensure that violations are booked under relevant laws to serve as a deterrent.
- A dedicated media cell in all Commissions would facilitate proactive engagement with the media for an informed media discourse on child rights issues and for monitoring and tracking media violations against children.

Judiciary and Child Rights

The Commissions are accountable to children for monitoring the implementation of child protection laws by the State. However, their powers are only recommendatory in nature and where the State fails to comply, the higher judiciary is to be approached under Section 15 of the CPC Act to seek compliance.

Suggestions for Collaborations

- By cultivating a working relationship with the judiciary through different forums such as NALSA, SLSAs, National and State Judicial Academies, and getting impleaded in ongoing cases related to child rights violations etc. The Commissions can contribute positively to furthering children's rights.
- NCPCR's inputs in writs filed in the Supreme Court as in Writ Petition Civil No. 473 of 2005, Sampurna Behura v/s Union of India & others⁶ stand testimony of the collaboration between courts and Children's Commissions for safe-guarding children's interests.
- A landmark resolution passed at the Chief Justices' Conference in 2006 and 2009⁷ was that the High Courts will impress upon State Governments to set up Juvenile Justice Boards, wherever not set-up and that Chief Justices may nominate a High Court Judge to make periodical visits and suggest remedial measures for the betterment of juvenile homes and inmates. The remand/observation homes established under the JJ Act Amended 2006 paved the way for judicial oversight in the implementation of the JJ Act Amended 2006 across the country. This resolution will extend to JJ Act 2015 as it replaces the earlier repealed JJ Act 2000 and its amendment in 2006 and 2011.

- The Hon'ble High Court of Delhi in WP (C) 8889/2011⁸ regarding the incarceration of children in prisons passed an order dated 11/05/2012 issuing guidelines for age verification, on the conduct of police and the treatment of juveniles in conflict with law. A few remarkable features of this Judgment included inquiry against the police in each case of lapse and that an Age Memo to be introduced by Police. Specific guidelines have been issued to the NALSA and SLSAs for providing legal aid to ensure that not a single child goes unrepresented. Complainant/ Victim can contest the age, before JJB decides on age. Implementation of this Judgment is to be monitored by Delhi High Court on six monthly basis. Age inquiry has to be conducted by way of evidence. Medical Reports are to be submitted within 15 days and accepted only after examination of Medical Board doctors.
- In a Public Interest litigation, W.P. No. 4840/2012⁹ taken suo motu by the High Court of Karnataka, the Karnataka SCPCR was made a respondent and submitted its response asking the High Court to consider constituting a State Level Juvenile Justice Committee on the lines of the Juvenile Justice Committee in Delhi which consists of four sitting Judges of the Hon'ble Delhi High Court to monitor the implementation of the JJ Act Amended 2006. It also suggested that District Level Juvenile Justice Committee be set up in each of the thirty districts. The existing provisions under the JJ Act 2015 for Management Committees, Inspection Committees and the Children's Committees should be enforced and the Chairpersons of these Committees could be included as members of the District Level Juvenile Justice Committee.

References

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2. Hon'ble Supreme Court of India in Sampurna Behrua v. Union of India & Ors. W.P.(C) No.473/2005 vide order dated 19.08.2011.
3. <http://delhicourts.nic.in/MAY12/Court%20on%20its%20Motion%20Vs%20Dept.pdf>
4. www.nja.nic.in/other-imp-links.htm
5. As directed by the Hon. Supreme Court in Sampurna Behrua v. Union of India & Ors. W.P.(C) No.473/2005 based on which NALSA has developed Guidelines.
6. <http://indiankanoon.org/doc/150571> / NCPCR as respondent in April 2011 strongly recommended measures to ensure implementation of the various provisions of JJ Act Amended 2006. It provided a country-wise report of the status of the constitution of Child Welfare Committees, Juvenile Justice Boards, Special Juvenile Police Units as well as the setting up of Observation Homes, Children's Homes, Shelter Home's Specialised Adoption Agencies and constitution of State Child Protection Society/Unit and District Child Protection Unit in Annexure 1 of the Writ Petition.
7. sci.nic.in/cjconference/cjconference2009resolutions.pdf
8. <http://delhicourts.nic.in/MAY12/Court%20on%20its%20Motion%20Vs%20Dept.pdf>
9. <http://indiankanoon.org/doc/184646929>

ANNEXURES

ANNEXURE Ia

Constitutional Provisions

Preamble

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC, REPUBLIC and to secure to all its citizens:- JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation; IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

Constitutional Provisions Relating to Children

- Article 14 provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- Article 15(3) provides that, 'Nothing in this article shall prevent the State from making any special provision for women and children.'
- Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law.
- Article 21A directs that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.
- Article 23 prohibits trafficking of human beings and forced labour.
- Article 24 prohibits employment of children below the age of fourteen years in factories, mines or any other hazardous occupation, etc.
- Article 25 provides freedom of conscience and free profession, practice and propagation of religion.
- Article 26 freedom to manage religious affairs.
- Article 27 freedom as to payment of taxes for promotion of any particular religion

- Article 28 freedom as to attendance at religious instructions or religious worship in educational institutions.
- Article 39(e) and (f) provide that the State shall, in particular, direct its policy towards securing to ensure that the health and strength of workers, men and women and the tender age of children are not abused and that the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength and that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that the childhood and youth are protected against exploitation and against moral and material abandonment.
- Article 45 envisages that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

ANNEXURE Ib

Useful Links

- National Policy for Children -2013
http://wcd.nic.in/sites/default/files/npcenglish08072013_0.pdf
- CPCRC Act 2005
<http://ncpcr.gov.in/showfile.php?lang=1&level=1&&sublinkid=267&lid=705>
- CPCRC Amendment Act 2006
<http://ncpcr.gov.in/showfile.php?lang=1&level=1&&sublinkid=266&lid=704>
- National Commission for Child Rights Rules 2006
<http://ncpcr.gov.in/showfile.php?lang=1&level=1&&sublinkid=265&lid=703>
- UN Convention on the Rights of the Child 1989
<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict 2000
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography 2000
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>

ANNEXURE II

Summary of Key Indian Legislation Related to Children

S. No.	Acts/ Legislations	
1	Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015)	An Act to consolidate and amend the law relating to children alleged and found to be in conflict with the law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social reintegration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, under this enactment and for matters connected therewith or incidental thereto
2	Commission for Protection of Child Rights Act, 2005 (CPCR Act, 2005)	An Act to provide for the constitution of a National Commission and State Commissions for Protection of Child Rights and Children's Courts for providing speedy trial of offences against children or of violation of child rights and for matters connected therewith or incidental thereto.
3	Right of Children to Free and Compulsory Education Act, 2009 (RTE Act, 2009)	An Act to provide for free and compulsory education to all children of the age of six to fourteen years.
4	The Prohibition of Child Marriage Act, 2006 (PCMA, 2006)	An Act to provide for the prohibition of solemnisation of child marriages and for matters connected therewith or incidental thereto.

S. No.	Acts/ Legislations	
5	The Protection of Children from Sexual Offences Act, 2006 (POCSO Act, 2012)	An Act to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.
6	Child Labour (Prohibition and Regulation) Act, 1986 (CLPRA, 1986)	An Act for the prohibition of employment of children in certain occupations and processes. - No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on: Provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by or receiving assistance or recognition from, Government.
	The Child Labour (Prohibition and Regulation) Amendment Act, 2016	'An Act to prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto.' (i) 'adolescent' means a person who has completed his fourteenth year of age but has not completed his eighteenth year; '(ii) 'child' means a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is more;

S. No.	Acts/ Legislations	
7	The Pre-Natal Diagnostic Techniques (Prohibition of Sex-Section) Act, 1994 (PCPNDT Act, 1994)	An Act to provide for the prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide; and, for matters connected therewith or incidental thereto.
8	The Hindu Adoptions and Maintenance Act, 1956	An Act to amend and codify the law relating to adoptions and maintenance among Hindus
9	Guardians and Wards Act, 1890	An Act to consolidate and amend the law relating to guardian and wards.
10	The Infant Milk Substitutes, Feeding Bottles and Infant Foods (regulation of Production, Supply and Distribution) Act, 1992 as amended in 2003 (IMS Act)	An Act to provide for the Regulation of production, supply and distribution of Infant Milk Substitutes, Feeding Bottles and Infant Foods with a view to the protection and promotion of breastfeeding and ensuring the proper use of infant foods and for matters connected therewith and incidental thereto. The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 as Amended in 2003 (IMS Act)

List of Relevant Legislations

- The Prohibition of Child Marriage Act, 2006
- Child Marriage Restraint Act, 1929
- The Children (Pledging of Labour) Act, 1933
- The Child Labour (Prohibition and Regulation Act), 1986

- The Commissions for Protection of Child Rights Act, 2005
- The National Commission for Protection of Child Rights Rules, 2006
- The Family Courts Act, 1984
- The Family Courts (Other qualification for appointment of Judges) Rules, 1994
- The Guardian and Wards Act, 1890
- The Hindu Adoption and Maintenance Act, 1956
- The Hindu Minority and Guardianship Act, 1956
- The Juvenile Justice (Care and Protection of Children) Act, 2000
- The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006
- The Juvenile Justice (Care and Protection of Children) Rules, 2007 (Published by Kama Publisher, New Delhi, 2010)
- The Juvenile Justice (Care and Protection of Children) Act, 2015
- The (Indian) Majority Act, 1875
- The Medical Termination of Pregnancy Act, 1971
- The Maternity Benefit Act, 1961 (Relevant Extract)
- The Medical Termination of Pregnancy Rules, 2003
- The Medical Termination of Pregnancy Regulations, 2003
- The Pre Conception and Pre Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994
- The Pre Conception and Pre Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996
- The Young Persons (Harmful Publications) Act, 1956
- The Indian Penal Code, 1860 (Relevant Extract)
- The Civil Procedure Code, 1908
- The Indian Evidence Act, 1972
- The Criminal Procedure Code, 1973
- The Immoral Traffic (Prevention) Act, 1956

- The Indian Penal Code, 1860
- The Right to Information Act, 2005.
- The Right of Children to Free and Compulsory Education Act, 2009
- The National Commission for Women Act, 1990
- The National Commissions for Minorities Act, 1992
- The National Commissions for Backward Classes Act, 1993
- The National Commission for Safai Karmacharis Act, 1993
- The National Commission for Minority Educational Institutions Act, 2004
- The National Commissions for Minority Educational Institutions (Financial & Administrative) Rules, 2005
- The National Commissions for Scheduled Tribes Rules, 2005
- The National Commission for Minority Educational Institutions (Procedure of Appeal) Rules, 2006 (Published by Professional Book Publisher, 2010)
- The Protection of Human Rights Act, 1993
- The Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995
- The Infant Milk Substitute Feeding Bottle and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992
- The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Amendment Act, 2003
- The Probation of Offenders Act, 1958
- The Protection of Children from Sexual Offences Act, 2012
- Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Rules, 1995
- Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993
- Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

- The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013
- The Protection of Civil Rights Act, 1955 and Rules, 1977

Additional Legal References

- Criminal Manual (comprehensive of the Indian Penal Code, Criminal Procedure Code and Indian Evidence Act) (Published by Universal Law Publisher Co.)
- The Indian Penal Code, Ratanlal and Dhirajlal V. R Mohan, Wadhwa and Co.
- The Civil Procedure Code (Published by Universal Law Publisher Co.)
- The Constitution of India, M.P. Bakshi (Published by Universal Law Publisher Co.)
- The Juvenile Justice (Care and Protection of Children) Act 2000, Mookerjee, (Published by Kamal Law House, Kolkata)

ANNEXURE III

Role of the Member Secretary, NCPCR

S. No.	Administrative functions	Statutory functions
1	<p><u>Section 11 (2) of CPCR Act, 2005</u></p> <p>The Member Secretary shall be responsible for the proper administration of the affairs of the Commission and its day-to-day management and shall exercise and discharge such other powers and perform such other duties as may be prescribed by the Central Government.</p> <p><u>Rule 5 of CPCR Act, 2005</u></p> <p>Rule 5: The Member Secretary shall:</p> <p>(i) have powers to execute all decisions taken by the Commission in order to carry out the powers and functions of the Commission as provided in Sections 13 and 14.</p> <p>(ii) exercise and discharge such powers and perform such duties as are required for the proper administration of the affairs of the Commission and its day-to-day management as specified in Section 11.</p> <p>(ix) ensure that the procedure of the Commission is followed by it in transaction of its business;</p>	<p><u>Rule 5 of CPCR Act, 2005</u></p> <p>Rule 5: The Member Secretary shall:</p> <p>(iii) convene the meetings of the Commission in consultation with the Chairperson and serve notices of the meetings to all concerned;</p> <p>(iv) take steps to ensure that the quorum required for convening a meeting of the Commission is secured;</p> <p>(v) prepare, in consultation with the Chairperson, the agenda for each meeting of the Commission and have notes prepared by the Secretariat and such notes shall, as far as possible, be self-contained.</p> <p>(vi) make available specific records covering the agenda items to the Commission for reference;</p> <p>(vii) ensure that the agenda papers are circulated to the Members at least two clear working days in advance of the meeting, except in cases when urgent attention is required;</p>

S. No.	Administrative functions	Statutory functions
	<p>(x) take up all such matters with the Ministry of Women and Child Development for release of grants, creation of posts, revision of scales, procurement of vehicles, appointment of staff, laying of annual and audit report in Parliament, reappropriation of funds, residential accommodation, permitting any officer of the Commission for deputation abroad and any other matter requiring the approval of the Central Government.</p> <p>(xi) exercise such financial powers as are delegated to him by Chairperson on behalf of the Commission.</p> <p>Provided that no expenditure on an item exceeding one lakh rupees shall be incurred without the sanction of the Chairperson.</p> <p>(xii) be the appointing and disciplinary appointing authority in respect of officers and other employees of the Commission.</p> <p>Rule 24 (4): The Chairperson shall, subject to such conditions and limitations and control and supervision, have powers to delegate his financial powers to any Member or the Member Secretary;</p>	<p>(viii) prepare the minutes of the meetings of the Commission and shall execute the decisions of the Commission taken in the meeting and shall also ensure placing the Action Taken Note of the decisions of the Commission before the Commission in its subsequent meetings;</p> <p>Rule 18 (3): The Member Secretary, along with such officers as the Chairperson may direct, shall attend the meetings of the Commission.</p> <p>Rule 18(4) (i): The Member Secretary shall, in consultation with the Chairperson, prepare the agenda for each meeting of the Commission and shall have notes prepared by the Secretariat and such notes shall, as far as possible, be self-contained;</p> <p>Rule 18 (4) (ii): The records covering the agenda items shall be made readily available to the Commission for its reference;</p> <p>Rule 18 (4) (iii): The agenda papers shall ordinarily be circulated to members at least two clear working days in advance of the meeting, except in cases when urgent attention is required.</p>

S. No.	Administrative functions	Statutory functions
	<p>Provided that no such powers shall be delegated in respect of incurring an expenditure on an item exceeding one lakh rupees without the prior approval of the Chairperson.</p> <p>Rule 24 (6): The Member Secretary shall have powers to execute all decisions taken by the Chairperson or any other Member on his behalf relating to financial matters.</p>	<p>Rule 18 (5): Four members including the Chairperson shall form the quorum at every meeting of the Commission.</p> <p>Rule 18 (6): All decisions of the Commission at its meetings shall be taken by majority;</p> <p>Provided that in the case of equality of votes, the Chairperson, or in his absence the person presiding shall have and exercise a second or a casting vote.</p> <p>Rule 18 (7): If for any reason, the Chairperson is unable to attend the meeting of the Commission, any Member chosen by the Members present from amongst themselves at the meeting, shall preside.</p> <p>Rule 19 (1): The minutes of each meeting of the Commission shall be recorded during the meeting itself or immediately thereafter by the Member Secretary or by any other officer of the Commission as directed.</p> <p>Rule 19 (2): The minutes of meeting of the Commission shall be submitted to the Chairperson for approval and, upon approval, be circulated to all members of the Commission at the earliest and in any case, sufficiently before the commencement of the next meeting.</p>

S. No.	Administrative functions	Statutory functions
		<p>Rule 19 (3): The conclusions of the Commission in every matter undertaken by it shall be recorded in the form of an opinion and dissenting opinions, if given, shall also form part of and be kept on record. Action shall be taken on the basis of majority opinion where there is any difference of opinion.</p> <p>Rule 19(4) All orders and decisions of the Commission shall be authenticated by the Member Secretary or any other officer of the Commission duly authorized by the Member Secretary with the prior approval of the Chairperson in this behalf.</p> <p>Rule 19(5) Unless specifically authorized, no action shall be taken by the Secretariat of the Commission on the minutes of the meetings until the Chairperson confirms the same.</p> <p>Rule 19 (6): A master copy of the record of all meetings and opinions of the Commission shall be maintained duly authenticated by the Member Secretary.</p> <p>Rule 19 (7): A copy of the minutes pertaining to each item shall be kept in the respective files for appropriate action. Opinion shall be kept in respective records and for convenience, copies thereof with appropriate indexing shall be kept in guard file.</p>

S. No.	Administrative functions	Statutory functions
		<p>Rule 20: Report of the follow up action shall be submitted by the Member Secretary to the Commission at every subsequent meeting indicating therein the present stage of action taken on each item on which the Commission had taken any decision in any of its earlier meetings, excepting the items on which no further action is called for.</p>

ANNEXURE IV

Present Status of the Sanctioned Posts in the National Commission for Protection of Child Rights (NCPCR)

S. No.	Posts	Scale	Number of Posts
	Group- A		
1	Director	14300-18300	01
2	Registrar	14300-18300	01
3	Presenting Officer	10000-15200	01
4	Principal Private Secretary	10000-15200	07
	Group-B		
5	Dy. Superintendent of Police	8000-13500	01
6	Assistant Director	8000-13500	01
7	Accounts Officer	8000-13500	01
8	Desk Officer	6500-10500	01
9	Assistant	5500-9000	02
10	Inspectors	5500-9000	01
11	Hindi Translator	6500-10500	01
12	Personal Assistant (Grade C)	5500-9000	03
13	Research Assistant	5500-9000	01
14	Accounts Clerk	5500-9000	01
	Group-C		
15	Clerk	4000-6000	02
16	Hindi Typist	4000-6000	01
17	Constables	4000-6000	02
	Group-D		
18	Class-IV	2550-3200	08
	Total		36

ANNEXURE V

Basic Standard Contents of NCPCR Website (Suggestive)

Site Map of NCPCR

- Accessibility Options
- Welcome to National Commission for Protection of Child Rights
- Forthcoming Events
- About NCPCR
 - ◆ Organization Structure
 - ◆ Constitution
 - ◆ Functions and Powers
 - ◆ Administration and Finance
 - ◆ Responsibilities under other Acts
 - ◆ Publication
- Disclaimer
- RTI
 - ◆ Recruitment Rules, 2012 of various posts in National Commission for Protection of Child Rights
 - ◆ Information under Section 4b of RTI Act
 - ◆ Office Order/Notice
 - ◆ Names, Designation and other particulars of Public Information Officers
 - ◆ OM/Orders related to RTI
 - ◆ Complaint Committee of National Commission for Protection of Child Rights (NCPCR) for Prevention of Sexual Harassment of Women at Workplace
 - ◆ RTI Act 2005

- ◆ Guidelines on RTI
- ◆ Information Under Section 4b
- ◆ RTI Appeals/Applications and Replies.
- Statutory Meetings
- Copyright Policy
- Screen Reader
- RTE
 - ◆ RTE Introduction
 - ◆ RTE Structure
 - ◆ RTE Activities
- Terms and Conditions
- POCSO
 - ◆ POCSO Introduction
 - ◆ POCSO Structure
 - ◆ POCSO Activities
 - ◆ State/UT-wise list of DCPUs, CWCs, JJBs, Special Courts and CCIs
- Bare Acts related to Children
- Website Policies
 - ◆ Content Archival Policy
 - ◆ Website Monitoring Policy
 - ◆ Website Contingency Management Policy
 - ◆ Terms and Conditions
 - ◆ Privacy Policy
 - ◆ Hyperlinking Policy
 - ◆ Disclaimer
 - ◆ Copyright Policy

- ◆ Content Review Policy
- ◆ Content Contribution, Moderation And Approval Policy
- ◆ Website Security Policy
- Contact Us
- North East Cell
 - ◆ Structure
 - ◆ Activities Undertaken by NE Cell
- Important Judgments
 - ◆ Supreme Court
 - ◆ High Court
- Activities
 - ◆ Child Education
 - ◆ Child Health and Care
 - ◆ Juvenile Justice
 - ◆ Child Labour
 - ◆ Child Psychology
 - ◆ Child Laws
 - ◆ POCSO
 - ◆ RTE
 - ◆ North East Cell
 - ◆ Complaints
- Guidelines
- Recommendations
- Reports

- ◆ Advisory Committee Meetings.
- ◆ Annual Reports
- ◆ Child Labour
- ◆ Child Health & Nutrition
- ◆ Corporal Punishments
- ◆ Female Foeticide
- ◆ Juvenile Justice
- ◆ Other Activities
- ◆ Research Reports
- ◆ Working Group Reports Media / Press Release
- ◆ Press Release
- ◆ NCPCR in news
- SCPCRs
- Vacancies
- Citizen's Charter
- Internship Reports
- Expert Groups/Advisory Committees
- Other Important Link
- Railways SOP

ANNEXURE VI



Revised and updated

Standard Operating Procedures (SOPs)

For Processing of Complaints, Inquiry and Investigation
in NCPCR



National Commission for Protection of Child Rights

(Ministry of Women & Child Development)

5th Floor, Chanderlok Building,
36- Janpath, New Delhi - 110001

Phone: 011-23478200, Fax: 23724026

Email: www.ncpcr.nic.in

For complaint: www.ebaalindan.nic.in

For e-Box: pocsoebox-ncpcr@gov.in (9868235077)

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INTRODUCTION

Considering the fact that India holds the largest child population in the world, and the Indian Constitution guarantees several rights to children, e.g. equality before law, free and compulsory education to children of the age group of 6 to 14 years, prohibition of trafficking and child labour, prohibition of child employment, prohibition of child marriage etc. India being a signatory to the international treaty of the United Nations Convention on the Rights of the Child - CRC, it is incumbent upon it to take all necessary steps to protect children's rights of survival, protection, participation and development. To protect these and several other rights, the National Commission for Protection of Child Rights (NCPCR), was set up on 5th March 2007, under the Commissions for Protection of Child Rights Act, 2005 (Act 4 of 2006) for monitoring cases of any deprivations & violations of child rights and matters connected therewith or incidental thereto.

Any child in distress or his/her parents or any well-wisher can approach the **Grievance Redressal Mechanism** of NCPCR by way of phone call/personal appearance/e-mail/letter/e-baalnidan/ POC SO e-Box/Grievances portal etc. and present the details of the Grievances for seeking remedies. NCPCR also takes *suo-motu* cognizance of a news item/an incident coming into notice/a story in a visual media involving any child in distress as a complaint (Sec-13(1)(j) of the CPCR Act). On receiving a complaint involving violation of child right the NCPCR takes up the matter with the concerned authorities and calls for a report. Follow up with the authorities are made by written/verbal reminders so as to get the report/facts/documents necessary for taking a view on the complaint.

While inquiring into any matter of child rights violation referred to it under Sec-13(1)(j) of CPCR Act, the NCPCR has quasi-judicial authority with the power of a Civil Court (Sec-14 of the CPCR Act). Such powers include summoning and enforcing the attendance of any person and examining him/her on oath, discovery and production of any documents receiving evidence on affidavits, requisitioning any public record, etc.

Instances of non-implementation of laws providing for protection and development of Children are also taken-up under the **Grievance Redressal Mechanism** and the concerned authorities are asked by the NCPCR to send a detailed report on the same so as to ensure corrective measure leading to welfare of the children (Sec-13(1)(j) CPCR Act).

Reports of non-compliance of policy decision, guideline, instructions aimed at mitigating hardship to and ensuring welfare of the children and to provide relief to such children and also taken-up under the **Grievance Redressal Mechanism** and the concerned authorities are asked by the NCPCR to send a detailed report on the same so as to ensure that corrective measures leading to welfare of children are taken in time (Sec-13(1) (j) CPCR Act).

In the event of a reported case of severe child rights violation requiring urgent action, the NCPCR immediately will send a fact finding team to the place in question for inquiring the matter and then and there also approaching the concerned authorities for immediate action leading to relief to the child in distress.

In this compendium a complete consolidated updated Standard Operating System (SOPs) for processing of complaints, inquiry and investigation in the NCPCR has been defined for taking appropriate action on the complaints for their speedy disposal.

CHAPTER – I

Preliminary

1. Short Title and Commencement:

- (i) These procedures may be called the National Commissions for Protection of Child Rights (NCPCR) Standard Operating Procedures, 2016, for conducting inquiries & investigations of Child Right violations & deprivations and processing the complaints.
- (ii) These shall be deemed to have come into force with immediate effect.

2. Definitions:

- (i) “Act” means the Commissions for Protection of Child Rights Act, 2005 (4 of 2006)” (CPCR Act, 2005) as amended from time to time.
- (ii) “Commission” means the National Commission for Protection of Child Rights constituted under Section 3 of the Act.
- (iii) “Chairperson” means the Chairperson of the Commission.
- (iv) “Member” means a Member of the Commission.
- (v) “Link Member” means the Member designated to look after the cases of complaints in absence of the regular Member.
- (vi) “Member Secretary” means the Member Secretary of the Commission.
- (vii) Designated Coordinator means the Grievances Redressal Officer of the Commission.
- (viii) “Link Officer” means an officer designated to look after the cases of complaints.
- (ix) “Director” means the Director of the Commission.
- (x) “Registrar” means the Registrar of the Commission.

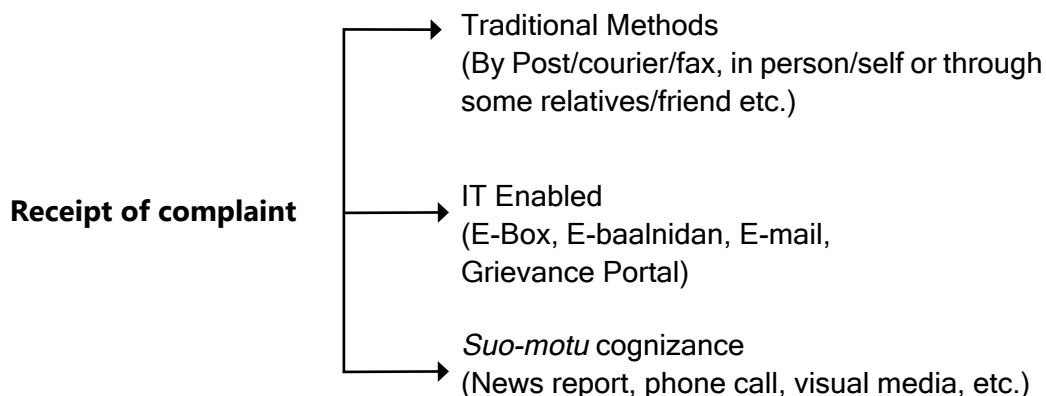
- (xi) “Dealing Hand” means an official appointed by the Commission for handling the complaints or on task based work.
- (xii) “Link Dealing Hand” means an official designated in absence of the regular official in complaint section.
- (xiii) “Bench” means a Bench consisting of one or two Members of the Commission as constituted by the Chairperson.
- (xiv) “Full Bench” means a Bench consisting of three or more Members of the Commission including Chairperson, or as constituted by Chairperson.
- (xv) “Cause list” means the scheduling of summons cases, to be heard by the Bench.
- (xvi) “Complaint” means all petitions/communications received in the Commission from a victim or any other person on behalf of the victim, in person, by post, by fax, by telegram, by e-mail, through commission’s website online complaint portal (e-baalnidan and e-Box), or by any other means whatsoever, alleging violation or abetment thereof or negligence in prevention of such violation by a public servant, or deprivation of all or any of the child rights defined in Section 2 (b) of the Act.
- (xvii) “*Suo motu*” notice means and includes all such incidents and actions reflecting implicitly and explicitly such violations and deprivations which the commission may take cognizance of on its own motion from newspapers, magazines, posters, radio news reports video/audio clippings.
- (xviii) Words and expressions not defined herein above shall, to the extent defined in the Act, have the same meaning as assigned to them therein.

CHAPTER – II

Procedure for dealing with complaints/suo-motu action

3. General -

(i) Process of receipt of complaints in NCPCR is as follows.



Complaints in English, Hindi or any other language included in the Eighth Schedule of the Constitution are entertained.

(ii) No fees will be charged by the Commission on such complaints.

(iii) Complaint may be in the form of petition/communication addressed to the Chairperson, Members, Member Secretary or any other Officer of the Commission received from a victim or any other person/organization on behalf of the victim, in person, by post, by fax, by e-mail, through Commission's website online complaint form (e-baalnidan and e-Box), or by any other means whatsoever including any form of electronic media, alleging violation or abetment thereof or negligence in prevention of such violation by a public servant, or deprivation of all or any of the child rights as defined in Section 2 (b) of the Act.

(iv) In case the complete picture of the complaint is not ascertainable from the communication received, the Commission may seek further information from the complainant.

4. Receipt & Registration of complaints -

- (i) All complaints received in the Commission shall be diarized in the computer on the day of receipt. Each communication received shall be allotted a Diary Number. Thereafter the complaint shall be submitted to Designated Coordinator of Complaint Management System who shall ascertain its admissibility.
- (ii) The Designated Coordinator of Complaint Management System shall ensure that all communications received are complaints falling under the purview of the Commission.
- (iii) The Designated Coordinator/in-charge of the complaints section will ensure that all complaints received are noted/recorded in the Computer and a unique ID No/Complaint No is accorded to the complaint.
- (iv) The Designated Coordinator in-charge of the complaints section shall ensure that the complaints received in languages other than Hindi/English and included in the Eighth Schedule of the Constitution are expeditiously got translated into Hindi/English for placing before the Commission.
- (v) The Designated Coordinator/in-charge of the complaints section will examine if the complaint *prima-facie* is considered as not entertainable and may be returned to the sender. Complaints shall be considered as not entertainable on the following grounds:
 - (a) illegible
 - (b) anonymous, pseudonymous or vague
 - (c) Trivial, frivolous or does not make out any specific child right violations.
 - (d) matter being *sub-judice*, pending before a Tribunal or any other Commission
 - (e) Matter is covered by a judicial verdict/decision of the Commission.
 - (f) Allegation is not against any public servant/Individual/Authority.
 - (g) Issues relating to service matters not involving the child rights.
 - (h) Matters relating to civil disputes, such as property rights, contractual obligations, labour/industrial dispute, conjugal matters involving custody of child, etc.
 - (i) Matter being outside the purview of the Commission.
 - (j) Any other ground/reason the Commission considers justifiable not to entertain the complaint.

- (vi) For the complaints found not entertainable, the same shall be returned to the complainant indicating the grounds of inadmissibility after obtaining the orders from the Members/Commission. A copy of the complaint and the communication shall be consigned to the records of the Commission.
- (vii) For the complaints to be entertained, the Designated Coordinator shall pass on the complaint to the concerned dealing hand in-charge with instructions to open a new file and allot a file number and make necessary entries in the Computer/Register.
- (viii) The concerned dealing hand in-charge shall also send a receipt/endorsement the complainant indicating the complaint/file number while asking for report from authority this will be deemed as acknowledgement of complaint.
- (ix) The concerned dealing hand in-charge shall simultaneously ascertain as to whether there is any possibility of involvement of any other Commission in investigations, if so, seek details of action taken along with a copy of the communication from such Commission.

5. Scrutiny of Complaints

- (i) The concerned official dealing with the complaint shall scrutinize and identify the following very clearly:
 - a) Name & address of the complainant.
 - b) Name, age (if given), sex
 - c) Address of the victim.
 - d) Person/authority/agency against whom the complaint is made.
 - e) Nature/gravity of the complaint.
 - f) Relevant facts and the gist of the complaint.
 - g) Relevant laws/rules/positions involved including the relevant portions of the NCPCR rules/guidelines.
 - h) List and nature of documents relied upon/referred to in the complaint.
- (ii) List down the details of additional information/documents/affidavits /statements of witness required in the process of redressal.

- (iii) Considering the fact that the Commission is dealing with the protection of child rights, all the complaints received are taken with the premise of being on urgent basis. However, all new complaints shall be carefully examined and the complaints marked as “urgent” shall be placed before the Commission within 24 hours of the scrutiny.
- (iv) All other complaints shall be carefully examined and placed before the Commission.

CHAPTER – III

Processing of the Complaints

6. Processing of the complaint:

- (i) After the receipt of complaint the concerned official dealing with it shall make out a gist of the complaint and listing the Authorities/Agencies/ Persons who are concerned in the case.
- (ii) The Concerned dealing hand shall ensure that the matter is not also consideration with a State Commission or any other similar authority and in case State Commission or any authority also examining the complaint, will forward the matter to them for necessary action under intimation to complainant.
- (iii) In all other cases where the complaint lies on NCPCR, a letter to the concerned Authorities/Agency/Department/Person may include seeking information/action taken not just on the complaint in specific but also on the issues involved and linked to the complaint of deprivation/child rights violations.
- (iv) The letter addressed to the concerned Authorities/Agencies/Departments/ Persons should give specific time for submission of responses. The specific time would depend upon the nature and gravity of the complaint varying from case to case.
- (v) The complainant needs to be informed about the complaint having been acknowledged and necessary action having been taken by the Commission. Such acknowledgement needs to incorporate the complaint number/Case diary no. etc. and the date of acknowledgement very clearly.
- (vi) The gist of the action initiated and letters sent by the Commission to the concerned Authority(ies)/Department(s)/Agency(ies)/Person(s) giving a stipulated time for action, shall be updated in the Complaint Management System (CMS).
- (vii) On updating the status in the CMS -“*The Reminder Date*” depending upon the time given in (iv) above, needs to be checked and flashed for due memory at a later date.

- (viii) On expiry of the stipulated time for action by the concerned Authority(ies)/ Department(s)/Agency(ies)/Person(s) and in case of non-receipt of response, the Concerned dealing hand shall put up a “Reminder” (**Reminder-I**), stipulating a specific time line depending on the nature and seriousness of issue in complaint, to give the concerned Authority(ies)/Department(s)/ Agency(ies)/ Person(s) a fair chance in equity and natural justice to respond.
- (ix) At the expiry of the stipulated specific time to respond and in case of non-receipt of any response, a second “Reminder” (**Reminder-II**) seeking response from the concerned Authority(ies)/ Department(s)/Agency(ies)/Person(s) will be issued.
- (x) In absence of any response to the communication of the Commissions issued to the concerned Authority(ies)/Department(s)/Agency(ies)/Person(s), the Commission may if it deems fit, issue a *Demi-Official* (D.O.) letter seeking personal attention of the Person concerned on the issue of the complaint. Such D.O. shall be direct, personal and friendly.
- (xi) In the extreme circumstance of non-response by the concerned Authority(ies)/ Department(s)/Agency(ies)/Person(s) to any of procedures in (vi), (viii), (ix) & (x) above, the Commission may initiate the process of summon the concerned person for personal hearing.
- (xii) In the complaints of child right violations & deprivations requiring urgent attention of the Commission, the steps contemplated in clause (viii), (ix) & (x).
- (xiii) Whenever the Commission receives complaints on issues of child trafficking/ child labour involving children belonging to more than one State, it shall be classified as inter-state complaints.
- (xiv) The Commission’s intervention on issues of child trafficking/child labour/children in need of care & protection, involving children from more than one state will include:-
 - (a) Seeking details on the child/children rescued- viz. name, sex, age, religion, caste, father’s name and address of residence.
 - (b) Seek SIR (Social Investigation Report) which may include the circumstances leading to the trafficking of the child.
 - (c) Details & decisions of CWC on rescue, restoration, repatriation & rehabilitation of the rescued children

- (d) Seek a copy of FIR filed which invariably should include includes relevant sections (Sec 75, 76, 77, 78, 79, 80, 81, 82, 83, 84 and 85) of Juvenile Justice (Care & Protection) Act, 2015 together with the relevant sections of other child related laws and sections of IPC.
- (e) The Designated Coordinator and in his absence the in-charge of the Complaints Section under Direction of Member/Chairperson shall facilitate repatriation of rescued children by coordinating efforts with the respective State Officials including the Social Welfare Department/CWC/NGOs working in the areas of child trafficking/missing children so that the parents of the children rescued are contacted at the earliest.
- (xv) The requisite compliance report shall be called from all concerned and documented properly.

CHAPTER – IV

Enquiry/Investigation in pursuance of Section 14 of CPCR Act, 2005 and under Rule 17 of NCPCR Rules, 2006 in respect of matters of Suo-motu cognizance and complaints

7. Under Section 14 of the CPCR Act, the Commission has all the powers of a Civil Court in respect of the following matters.

- (a) Summoning and enforcing the attendance of any person and examining him on oath;
- (b) Discovery and production of any document;
- (c) Receiving evidence on affidavits;
- (d) Requisitioning any public record or copy thereof from any court or office; and
- (e) Issuing commissions for the examination of witnesses or documents.

(In routine cases, the enquiries into the complaints can be made by writing letters to the concerned authority, followed up by phone calls. However, in serious cases a severe child rights violation, the Commission sends a fact finding team with due approval of the Chairperson to the place in question for enquiring the matter then and there and approaching the concerned authorities for immediate action leading to relief to the child in distress).

Suo-motu cognizance

- (i) The Chairperson/Member/Member Secretary/Registrar may also take *suo-motu* cognizance i.e., cognizance on its own motion, of issues/incidents relating to child rights violation/deprivation reflected in any television broadcast, newspaper, magazine, posters, radio broadcast or any other audio/video media etc.
- (ii) The Commission being a quasi-judicial body may conduct inquiry/direct investigation and start the process of law on its own motion under the Code of Civil Procedure, 1908 (5 of 1908) in pursuance of powers vested in the Commission u/s 14 of CPCR Act, 2005.

- (iii) The Commission, if feels necessary constitute a team comprising of its members, officials, experts in the field of child rights for conducting direct investigation and submit a report to the Commission, Such team shall be Constituted by the Chairperson.
- (iv) No member of the investigation/inquiry team shall divulge any information to anyone outside the team/Commission unless the report of the team is approved & adopted by the Commission.
- (v) On adoption of the Report of Inquiry by the Commission, a gist of the Report and the Recommendations on the remedial measures suggested may be sent to the concerned authorities.
- (vi) Concerned dealing hand / in-charge of the case under the supervision of the A.D. shall follow up the case with the concerned authorities until the logical conclusion of the complaint is satisfactorily arrived.

CHAPTER – V

8. Quasi-Judicial functions of the Commission

A. Summon protocol for facilitating inquiry/investigation.

- (i) The summons/enforcement of attendance of a concerned officer/a connected person by the Commission shall be only for the purpose of inquiry or suo-motu notice of matters taken by the Commission u/s 13(1) (j) of the CPCR Act. The purpose of summoning will be for extracting relevant information/evidence and/ or giving him an opportunity to be heard in the matter.
- (ii) A full case has to be made out on file to the Member concerned along with a self-contained note by the concerned dealing hand of the Complaint Section. The Member concerned, after being satisfied with the justification for the summoning of an officer/person, will send the file to the Chairperson for approval.
- (iii) The summoning of an officer/a concerned person in complaints/suo-motu matter (which is under inquiry) will be taken by the Chairperson. The Chairperson may consult two other members, one of whom shall be the Member initiating the proposal for summon'.
- (iv) 'The Bench for Summons Hearing will comprise the Chairperson and at least two Members (including the dealing Member). In emergency situation, the Bench will comprise Chairperson and at least one Member. In the absence of Chairperson, the Bench will be chaired by the dealing Member. The decision of the Bench will be taken by majority. In case of a tie, the Chairperson or the Member chairing the Bench will have a casting vote'.
- (v) The decision of the Bench will be taken by majority.
- (vi) 'The Summons will be issued by the Registrar with the approval of Chairperson on file which will be referred to him along with a self contained note with full justification for such summons by the dealing Member The file will include a draft summons, as finalized by the concerned Member with the assistance of the concerned dealing hand of the Complaint Section and/or with the support of a lawyer engaged for the purpose of legal assistance in a particular summoning process (to perform the tasks at pre-summoning stage, during the Summons Hearing and for preparation of the draft proceedings of post hearing).

- (vii) The lawyers/experts shall not form part of the Bench for the summon hearing. Their presence will be utilized for the purpose of rendering support to the Bench to attend to any specific queries. Such role clarity must be conveyed to the concerned lawyer engaged for the purpose of specific summons hearing. The lawyer will also prepare the proceeding of the summons hearing. For the above purpose as well as assisting the Commission in other legal matters, a Panel of Lawyers to be drawn up, based upon the names referred by Chairperson, Members, Member Secretary and Registrar. The Panel could be finalized/ approved by Chairperson on the recommendation of an Internal Committee Constituted by her for the purpose.
- (viii) The officers, complainants and witnesses summoned for the hearing are seated in separate rooms’.
- (ix) The summons hearing of the concerned officer(s) and/or person(s) by the bench will either be video recorded and their statements be taken on oath. However, the written statements from such officer(s)/person(s) may be taken only when they are not examined on oath by the Bench and the same is not video recorded.
- (x) The proceeding and the recommendations emerging from the Summon Hearing to be finalized by the dealing Member with the support of his/her Concerned dealing hand and/or Lawyer/Expert assisting in the matter and will be moved on file though Registrar/Member Secretary to the Chairperson for approval.
- (xi) The recommendations (post-hearing) to be issued under Section 15 of the CPC Act, 2005) by the Member Secretary/Registrar, as decided in accordance with Para (v) above.
- (xii) The follow-up of the recommendations with the concerned State Government/ authorities primarily done by the concerned Member. The Member will be supported by the Member Secretary in the follow-up process in case required to do so.

The Summons Hearing of the concerned officer(s) and/or person(s) by the Bench will either be video recorded and their statements be taken on oath. However, the written statements from such officer(s)/person(s) may be taken only when they are not examined on oath by the Bench and the same is not video recorded.

The proceeding and the recommendations emerging from the Summon Hearing to be finalized by the dealing Member with the support of his/her Concerned dealing hand and/or Lawyer/Expert assisting in the matter and will be moved on file through Registrar and Member Secretary to the Chairperson for approval.

The recommendations (post-hearing) to be issued (under Section 15 of the CPCR Act, 2005) by the Member Secretary/Registrar, as decided in accordance with Para (v) above.

(xiii) Under the guidance of Registrar, the required coordination for a Summon Hearing will be looked after by the concerned dealing hand with the support and facilitation of the Coordinator of the Complaints Section as well as the General Administration Section (for logistics). Such coordination work would involve, inter alia: obtaining confirmations from the officer(s)/person(s) who have been summoned, informing the same to all concerned; taking the attendance of the official(s) and person(s) attending the summons and supplying the same to the Bench; requisitioning arrangements for recording facilities and, staff to be posted on duty, etc. The IT Section of the Commission will assist in the process of audio/video recording or in the presentation of any audio visual documentary evidence before the Bench. The Bench will have support of required number of PPSs/PAs and/or Concerned dealing hand for documenting the proceeding, taking statements, etc.

9. Constitution of Bench

- (i) The Concerned dealing hand/in-charge of the case shall prepare the gist of the case and the self-contained note together with the relevant papers giving details of the circumstance relating to the case leading to be heard by the Bench. The requisite number of copies shall be prepared for use of all the members of the Bench. The case file and the relevant papers shall be forwarded to the Registrar or any other Designated Officer who will put up the file to Chairperson for seeking order for issuing summons/hearing.
- (ii) Depending on the seriousness of the matter and gravity of the complaint/*suo-motu* cognizance, the Chairperson may constitution a Bench (Two Members/ Full Bench) of the Commission for hearing, by way of special or general orders.
- (iii) The Presenting Officer or Designated Officer shall prepare the 'Cause List' (being the scheduling of the summons) in cases to be heard by the 'Bench'. Such 'Cause List' shall be uploaded and updated on the website of the Commission and also circulated to the concerned Members.
- (iv) The Registrar and in his absence the Designated Officer shall invariably issue the summons. The summons so issued shall provide a time line of at least 15 days to the persons/officials summoned, except in cases of extreme emergency.

- (v) It shall be the duty of the Presenting Officer to study and present the case and render such other assistance as may be required, for consideration and disposal of the case.
- (vi) The Presenting Officer shall assist each Member of the Bench, wherein the persons summoned in a case will be subjected to examination on oath and their statement will be recorded accordingly.
- (vii) The Presenting Officer will record the proceedings of the case and seek the records/orders directly from the Bench in the case.

CHAPTER – VI

10. Action to be taken after an inquiry/hearing and follow up action

1. Section 15 of CPCR Act, 2005 provides steps to be taken after an inquiry are given below:
 - (i) where the inquiry discloses, the Commission of violation of child rights of a serious nature or contravention of provisions of any law for the time being in force, it may recommend to be concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;
 - (ii) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;
 - (iii) recommend to the concerned Government or Authority for the grant of such interim relief to the victim or the members of his family as the Commission may consider necessary.

11. Procedure to be adopted after Inquiry

- (i) Wherever the inquiry by the Commission reveals a child rights violation/ deprivation, it may recommend to the concerned government/authorities to initiate the departmental process of inquiry/process of law against those accused of irregularity violation of legal provisions under various child jurisprudence, as it deems fit.
- (ii) A copy of the Inquiry/Investigation Report together with its recommendations shall be forwarded to the concerned Government Department(s)/agency(ies) and the complainant within 15 days of the examination.
- (iii) The concerned Government Department(s)/Agency(ies) shall be required to submit their Action Taken Report/comments on the recommendations made by the Commission within prescribed time.
- (iv) The Commission on analysis of the inquiry/investigation report may also approach the respective High Court of the State concerned or the Supreme Court with its findings/recommendations for such directions, orders or writs as the Commission may deem appropriate.
- (v) The Commission may also approach the court for grant of such interim relief to the victim/s in order to maintain *status quo*.

CHAPTER VII

Analysis of Action Taken Reports/Investigation Reports

12. Analysis of ATR/Investigation Report:

- (i) The Registrar shall scrutinize ATR/get the ATR (Action Taken Report) and communications received from the concerned Authority(ies)/Agency(ies)/Department(s)/Person(s) scrutinized through the concerned dealing hand empanelled by NCPCR for the purpose. The scrutiny of the ATR may include:
 - a) Whether the response to complaint/cause of action has been adequately acknowledged by the concerned authorities.
 - b) Whether the concerned Authorities have successfully been able to relate/reply to the information called for.
 - c) The lapses if any, observed in procedures adopted and the inaction in handling the issue to be highlighted in the analysis of the ATR.
 - d) Whether the information received is sufficient for examining the matter fully? If not, further details to be called for, to be highlighted.
 - e) Whether any relief is provided to the victim or his/her family by the concerned authorities may be highlighted, while analyzing the ATR.
- (ii) It shall be the duty of the Registrar to monitor the disposal of the cases and apprise the Complaints Review Committee and the Commission on the pace and progress of the disposal of the complaints.
- (iii) The Registrar shall also present the Commission a report on the operation of qualitative aspect of the complaint redressal mechanism in the Commission, after obtaining reports from the Complaints Section.

ANNEXURE VII

Annual Report (Template for Annual Report)

S. No	Chapter	Page No
1	Preface	
2	NCPCR: An Overview	
3	Education	
4	Juvenile Justice	
5	Protection of Child Rights from Sexual Offences (POCSO)	
6	Child Labour	
7	Child Laws and Representation in Courts	
8	Child Psychology	
9	Child Health & Nutrition	
10	Status of Complaints & Successful Interventions	
11	Rights of Children in North-East Region	
12	Official Language	
13	Recommendations	
14	Important decisions of the Commission	
15	Consolidated Financial Statement for 2015-16	
16	Audit Certificate for 2015-16	
17	Annexures	

ANNEXURE VIII

Table A8.1

Name of the State: _____

Implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 for Child in Conflict with Law

S. No.	Total Number of Districts	Number of JJBs in the State u/s 4 of JJ Act, 2015		Number of Children Courts in the State u/s 25 of CPCR Act, 2005		Special Juvenile Police Unit (SJPU)/ Child Welfare Police Officer (CWPO) u/s 107 of JJ Act, 2015		
		Total sanctioned	Actual	Total sanctioned	Actual	No. of SJPU in State	Total strength	
1	2	3 (a)	3 (b)	4 (a)	4 (b)	5 (a)	5 (b)	

Date _____

Period ending _____

	No. of Probation officer in the State	District Child Protection Unit u/s 106 of JJ Act, 2015		Cases of crime committed by Children		Review of pendency of inquiry in JJB	
		Total no. of DCPU in State (Distt-wise list)	Total strength/ staff of DCPU	Total no. of pending cases in States from 01.01.2016 to 30.6.2016	Total no. of cases disposed of in State during the period of report	Total number of review done u/s 16 (2) by the concerned Secretary	Total number of review done u/s 16 (3) by District Magistrate
	6 (a)	(6 (b)	7	8 (a)	8(b)	9 (a)	9 (b)

(Name & Signature of the Nodal Officer of the State)

Table A8.2

Name of the State: _____

Implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 for Child in Conflict with Law

S. No.	Total No. of Distt.	Juvenile Justice Boards u/s 4 of the JJ Act, 2015							
		Total No. of JJBs sanctioned in the State u/s 4 of Act	Actual JJBs	Whether sitting of JJBs are held in the premises of regular court Yes/No	No. of sittings in a week by JJB	Whether induction & sensitization of all members incl Pr. M. provided within sixty days u/s 4 (5) of Act	Whether JJB conducted inspection visit of residential facilities for CCL at least once in a month u/S.8 (3) (j) Yes/ No	Whether JJB conduct regular inspection of adult jails to check if any child is lodged in such jails. u/s.8 (3) (m) Yes/ No	
1	2	3 (a)	3 (b)	3 (c)	3 (d)	3 (e)	3 (f)	3 (g)	

Date _____

Period ending _____

No. of pending cases in JJBs		No. of pending cases in Children Courts		Observation Home		Special Home		Place of Safety	
Total no. of pending cases from 1.1.16 to 30.6.16	Disposed of cases during the period of report	Total no. of pending cases from 1.1.16 to 30.6.16	Disposed of cases during the period of report	Total number of children	More than 3 months	Total number of children	More than 18 yrs of age	Total No. of children	More than 18 yrs of age
4 (a)	4 (b)	5 (a)	5 (b)	6 (a)	6 (b)	7 (a)	7 (b)	8 (a)	8 (b)

(Name & Signature of the Nodal Officer of the State)

Table A8.3

Name of the State: _____

Implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 for Child in need of Care and Protection

S. No.	Total No. of Distt.	Child Welfare Committee u/s 27 of the JJ Act							
		Total no. of CWCs sanctioned in the State	Actual CWCs	Whether specific space has been provided for sittings of CWC or not	Whether induction and sensitization of all member of CWC is provided with two months from date of notification. (S.27)	Whether meeting of CWC is being held for 20 days in a month u/s 28 of Act	No. of sittings held by CWC from 1.1.16 to 30.6.16	Whether quarterly review done by DM u/s 27 (8) of Act Yes/No	
1	2	3 (a)	3(b)	3 (c)	3 (d)	3 (e)	3 (f)	3 (g)	

Date _____

Period ending _____

	No. of children declared legally free for adoption month-wise	No. of Pending cases With CWCs		Cases of crime committed against children		Quarterly Review of pendency of cases u/s 36 (4) of the JJ Act, 2015
		Total no. of pending cases from 1.1.2016 to 30.6.2016	Total no. of cases disposed off during the period of report	Total no. of pending cases from 1.1.2016 to 30.6.2016	Total no. of cases disposed off by CWC during the period of report	
Whether CWC is conducting two inspections visits per month of all CCIs for CNCP in Distt. u/s 30 (8) of Act						Yes/No
3 (h)	4	5 (a)	5 (b)	6 (a)	6 (b)	7

(Name & Signature of the Nodal Officer of the State)

Table A8.4

Name of the State: _____

Implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015

Setting up of Institutional Infrastructure in the State

S. No.	State Child Protection Society u/s 106 of JJ Act, 2015		Open Shelter u/s 43 of the JJ Act		Observation Home u/s 47 of the JJ Act		Special Home u/s 48 of the JJ Act	
	Whether Society has been constituted	If yes, Copy of the Constitution	Total no. of Open Shelter and capacity	Total no. of children as on 30.6.2016	Total No. of Observation Home and capacity	Total No. of children as on 30.6.2016	Total No. of Special Home and capacity	Total No. of children as on 30.6.2016
1	2 (a)	2 (b)	3 (a)	3 (b)	4 (a)	4 (b)	5 (a)	5 (b)

Date _____

Period ending _____

Place of Safety u/s 49 of the JJ Act		Children Home u/s 50 of the JJ Act		Appointment of Inspection Committee by State u/s 54 of the JJ Act 2015 Yes/No	Recognition of Specialized Adoption Agency (SAA) u/s 65 and setting up of State Adoption Resource Agency (SARA) u/s 67 of JJ Act, 2015	Whether Juvenile Justice Fund has been created u/s 105 of the JJ Act, 2015 Yes/No	
Total No. of Place of Safety and capacity	Total No. of children as on 30.6.2016	Total No. of Children Home and capacity	Total No. of children as on 30.6.2016		No. of SAA and No. of children as on 30.6.2016	No. of children in SARA as on 30.6.2016	
6 (a)	6 (b)	7 (a)	7 (b)	8	9 (a)	9 (b)	10

(Name & Signature of the Nodal Officer of the State)

ANNEXURE IX

Table A9.1

Name of the State: _____

Implementation of the Protection of Children from Sexual Offences (POCSO) Act, 2012: Capacity Building

S. No.	Total No. of publicity / awareness campaigns organized u/s 43 (a) of the POCSO Act 2012 and u/r 6 of the POCSO Rules 2012 be indicated	Whether State Govt. has designed module for training of Police officers & other persons? u/r 6 of the POCSO Rules 2012 Yes/No	Whether officers of the State Govt. and other concerned persons have been imparted periodical training on the matters relating to implementation of the provisions of the POCSO Act 2012 as per Section 43 (b) and rule 6 of the POCSO Rules 2012. If so, the number of personnel trained for each category.			
			SJPU/ Local Police	Medical Profess.	CWC members	Judicial Officers
1	2	3	4(a)	4 (b)	4 (c)	4 (d)

Monthly report ending _____

		Whether State Govt. has established Victim Compensation Fund or other scheme u/r 7 (4) of POCSO Rules 2012? Yes/No	Whether State Govt. is paying compensation ordered by the Special Court within 30 days of receipt of such order u/r 5 of POCSO Rules 2012? If so,		
Sr. Public Prosecutors	Support pers (Counsellors)		No. of victims given interim relief during the month of the report	No. of victims given final relief during the month of the report	
4 (e)	4 (f)	5	6 (a)	6 (b)	

Signature of the Nodal Officer of the State

Table A9.2

Name of the State: _____

Implementation of the Protection of Children from Sexual Offences (POCSO) Act, 2012

Setting up of institutional infrastructural facilities

S. No.	Total No. of Districts in the State	No. of Special Courts designated in the State u/s 28 of the Act POCSO 2012	Whether all Special Courts are located in the premises of Adult Courts? Yes/No	Total No. of Distt. Child Protection Unit u/s 106 of JJ Act, 2015	Total No. of CWCs in the State u/s 27 of the JJ Act 2015	Total No. of Special Juvenile Police Unit (SJPU)/ Child Welfare Officer (CWO) u/s 107 of JJ Act 2015	No. of Police Stations in the State	
1	2	3	4	5	6	7	8	

One time data (as on 30.7.2016)

No. of Special Public Prosecutors appointed u/s 32 of the POCSO Act, 2012	Whether a Legal Service Authority has been established to maintain a panel of lawyer to provide assistance to victim u/s 40 of the POCSO Act 2012 Yes/No	Whether guidelines/ procedure for media to handle POCSO cases has been prepared u/s 23 of POCSO Act 2012 Yes/No	Whether Guidelines for use of NGOs, Professionals, experts, etc. have been formulated u/s 39 of the POCSO Act 2012 & u/r 6 of POCSO Rules 2012 If yes, copy be attached.	Whether DCPU maintains a register of interpreters, translators and special educators for the purpose of the Act u/r 3 of POCSO Rules 2012 Yes/No	Total No. of interpreters & Spl. Educators in the State u/s 38 of the POCSO Act 2012 List to be attached.	Whether rules for interpreters /translators & Spl. Educators have been made u/r 3 (2) of the POCSO Rules 2012
9	10	11	12	13	14	15

Signature of the Nodal Officer of the State

Table A9.3

Name of the State: _____

Implementation of the Protection of Children from Sexual Offences (POCSO) Act, 2012-Delivery System

Total No. of offenders apprehended in the State u/Ss 3,5,7,9, 11, 13 & 15 of POCSO Act 2012	Total No. of FIRs lodged in Police Stations/ SJPU u/Ss 3,5,7,9, 11, 13 & 15 of POCSO Act 2012	Total No. of children declared CNCP as per Police record u/s 19 (5) of POCSO Act 2012	Total No. of cases in which Charge-sheets filled u/Ss 3,5,7,9, 11, 13 & 15 of POCSO Act 2012	Total No. of victim/ children sent for emergency medical care u/r 5 of the POCSO Rules 2012	No. of MLC obtained u/s 27 of the POCSO Act 2012	No. of cases for non-reporting or non-recording u/s 19 and u/s 20 of the POCSO Act 2012	No. of cases of offences committed by children under the JJ Act 2015 & as per S.34 of the POCSO Act 2012	
1	2	3	4	5	6	7	8	

Monthly report ending _____

<p>Status of cases disposed off/pending in Special Courts u/s 3,5,7,9, 11, 13 & 15 of POCSO Act 2012</p> <p>(Evidence is to be recorded within 30 days of the Special Court taking cognizance of the offence. Reasons for delay to be recorded by the Special Court u/s 35 (1) of the POCSO Act, 2012)</p> <p>Reasons for Acquittal:</p> <ul style="list-style-type: none"> ◆ Lack of evidence- No. of cases: ◆ Hostile witnesses- No. of cases: ◆ Frivolous cases - No. of cases: ◆ Any other - No. of cases: 					<p>Total No. of pending cases more than one month with the State Police during the period of the report</p>	
Total No. of cases discharged	Total No. of cases decided		Total No. of cases in which bail granted	No. of cases pending with Special Court		
	Acquittal	Conviction		Total No. of pending cases more than one year u/s 35 (2) of POCSO Act 2012		
9 (a)	9 (b)	9 (c)	9 (d)	9 (e)	10	

Signature of the Nodal Officer of the State

Table A9.4

Name of the State: _____

Implementation of the Protection of Children from Sexual Offences (POCSO) Act, 2012-Delivery System

Sl. No.	Crimes against Children under the POCSO Act, 2012								
	No. of cases registered u/s 4 for the offence of Penetrative sexual assault	No. of victims involved	No. of cases registered u/s 6 for the offence of Aggravated Penetrative sexual assault	No. of victims involved	No. of cases registered u/s 8 for the offence of Sexual assault	No. of victims involved	No. of cases registered u/s 10 for the offence of Aggravated Sexual assault	No. of victims involved	No. of cases registered u/s 12 for the offence of Sexual harassment
1	2(a)	2(b)	2 (c)	2 (d)	2 (e)	2 (f)	2 (g)	2 (h)	2 (i)

-

Monthly report as on _____

			No. of Cases under Investigastion	No. of cases under which Charge sheet filed	No. of cases under which Closure filed	No. of cases of convictions	No. of cases of acquittal
No. of victims involved	No. of cases registered u/s 14 & 15 for the offence of Poronography	No. of cases registered u/s 18 for the offence of attempt to commit an offence					
2 (j)	(k)	2 (l)	3	4	5	6	7

Signature of the Nodal Officer of the State

ANNEXURE X

Anant Kumar Asthana vs. Union of India & others [WP (Civil) No 787 of 2012]

Guidelines for Media Reporting on Children:

Media coverage on matters relating to children may have long term consequences on their overall development (physical, mental, psychological, emotional, moral, social, economic etc.), life and dignity and lack of care by Media in this regard may entail real risk of children facing harm, stigma, disqualification, retribution etc. The privacy, dignity, physical and emotional development of children are of the utmost importance, which are to be preserved and protected at all times, while reporting/broadcasting/publication of news/programmes/documentaries etc. on and for children.

The guidelines are in the backdrop of the existing legal framework, as detailed in SCHEDULE hereto, to secure and protect the rights of children and to set-out the minimum parameters of responsibility to be borne by print and electronic media (hereinafter referred to as Media) in relation to reporting/broadcasting/publication of news/programmes/documentaries etc. on and for children.

1. **Meaning of terms used:**

- 1.1. Child or children shall mean a person(s) who has/have not completed 18 years of age.
- 1.2. Media shall include, but not be limited to, any newspaper, magazine, news-sheet or electronic media.

2. **PRINCIPLES:**

- 1.1. Involvement of children in news/programmes/documentaries etc. must evidently be editorially justified including from a child rights perspective.
- 1.2. Media shall ensure that child victims of rape, other sexual offences, trafficking, drug/substance abuse, elopement, organized crimes, children used in armed conflicts, children in conflict with law and child witnesses etc. are automatically guaranteed anonymity for life.
- 1.3. Media must ensure that due consideration is given to a child's right to privacy and to prevent the child from being exposed to anxiety, distress,

trauma, social stigma, risk to life and safety and further suffering in relation to reporting/broadcasting/publication of news/programmes/documentaries etc. on and for children.

- 1.4. Media shall ensure that a child's identity is not revealed in any manner, including but not limited to, disclosure of personal information, photograph, school/institution/locality and information of the family including their residential/official address.
- 1.5. Media shall not sensationalize issues or stories, especially those relating to children, and should be conscious of the pernicious consequences of disclosing/highlighting information in a sensational form and the harm it may cause to children.

1.6. INTERVIEWING A CHILD by the MEDIA:

This shall be governed by the following principles:

- a) That the interview is in the child's best interest.
 - b) That the interview does not aggravate the child's situation further.
 - c) That the manner and content of the interview doesn't affect/interfere with the child's right to privacy.
 - d) That if the interview is in the child's best interest, the same shall be done under supervision and consent of the child's parent(s) or legal guardian, or in the alternative, the competent authorities for the child.
 - e) That while interviewing a child, his/her consent may be obtained, depending upon his/her age and maturity.
 - f) Frequent interviewing of a child must be avoided.
 - g) The child's refusal to be interviewed must be honoured.
 - h) Before interviewing the child, he/she must be duly informed about the purpose and manner of the interview.
 - i) The child and/or his/her parents/guardian or any person having control over him/her shall not be coerced or enticed in any manner including financial or other inducement to secure consent for the interview.
- 1.7. Media must verify the credentials and authority of individuals/organizations whose consent is sought on behalf of the child.

- 1.8. Media shall not give any financial or other inducement to the child or parent/guardian or others in relation to reporting/broadcasting/publication of news programmes/documentaries etc. on and for children.
- 1.9. Media must balance its responsibility to protect children from unsuitable content with the right to freedom of expression and the right to know.
- 1.10. To protect the identity of the child media shall ensure that any visual showing the face of the child must be completely morphed in cases where privacy/anonymity is required as illustrated in Principle 2.2. above.
- 1.11. Media shall orient/sensitize its editorial personnels, including editors/editorial team/reporters/correspondents/producers/photographers etc. about laws, rules, regulations and guidelines related to reporting/broadcasting/publication of news/programs/documentaries etc. on and for children.
- 1.12. The media shall proactively promote the children's right to information and freedom of expression.

1.13. PUBLICITY:

The Department of Information and Public Relations of all State Governments and U.T. Administrations, the Directorate of Field Publicity, Directorate of Advertising and Visual Publicity (DAVP) of Ministry of Information and Broadcasting, Prasar Bharati (AIR and DD), Self-Regulatory Bodies etc. shall give due publicity at appropriate intervals to the laws, rules, regulations and guidelines (including the Guidelines) related to reporting/broadcasting/publication of news/programmes/documentaries etc. on and for children.

1.14. MONITORING:

The compliance with the applicable laws, rules, regulations and Guidelines (including these ones) related to reporting/broadcasting/publication of news/programmes/documentaries etc. on and for children shall be monitored by the following:

- (a) the self-regulatory bodies
- (b) the regulatory mechanisms of Ministry of Information and Broadcasting, such as, Electronic Media Monitoring Center (EMMC) and Inter-Ministerial Committee (IMC)
- (c) Press Council of India. through their respective procedures.

1.15. STATUS REPORT:

NCPCR/SCPCRs shall file a report in this Court on yearly basis regarding the compliance level of the applicable laws, rules, regulations and Guidelines (including these ones) by all concerned.

The foregoing are only broad Guidelines and are not meant to be exhaustive.

Schedule

1. Legal Framework:

1.1. International:

The UN Convention on the Rights of the Child

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Article 40 of the Convention, states that the privacy of a child accused of infringing penal law should be protected at all stages of the proceedings.

1.2. National:

1.2.1. The Juvenile Justice (Care and Protection of Children) Act, 2000

Section 19: Removal of disqualification attaching to conviction.

Section 21: Prohibition of publication of name, etc. of juvenile in conflict with law or child in need of care and protection involved in any proceedings under the Act.

The Juvenile Justice (Care and Protection of Children) Rules, 2007

Rule 3: Fundamental Principles to be followed in administration of these rules:

Principle II Principle of dignity and worth

Principle IV Principle of Best Interest

Principle VII Positive Measures

Principle XI Principle of right to privacy and confidentiality

Principle XIV Principle of Fresh Start

1.2.2. Press Council of India Act, 1978:

The Press Council of India under the mandate of Section 13(2)(b) of the Act has THE NORMS OF JOURNALISTIC CONDUCT, 2010

The 2010 edition of Norms of Journalistic Conduct updates the norms evolved since 1996 on the basis of adjudications and other pronouncements and covers to a large extent almost every aspect of compulsions and compunctions in journalistic practice.

6(i) The Press shall not intrude or invade the privacy of an individual, unless outweighed by genuine overriding public interest, not being a prurient or morbid curiosity. So, however, that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by the Press and the media, among others.

Explanation: Things concerning a person's home, family, religion, health, sexuality, personal life and private affairs are covered by the concept of PRIVACY excepting where any of these impinges upon the public or public interest.

6(ii) Caution against Identification: While reporting crime involving rape, abduction or kidnap of women/females or sexual assault on children, or raising doubts and questions touching the chastity, personal character and privacy of women, the names, photographs of the victims or other particulars leading to their identity shall not be published.

6(iii) Minor children and infants who are the offspring of sexual abuse or 'forcible marriage' or illicit sexual union shall not be identified or photographed.

◆ Ensure Sensitivity on Child-Related Stories

The identity of children infected and affected by HIV should not be revealed. Nor should their photographs be shown. This includes orphans and children living in orphanages, juvenile homes etc.

Press Council (Procedure for Inquiry) Regulations, 1979

Complaint procedure against a newspaper, news agency, editor or other working journalist under Section 14(1) of the Act for professional misconduct.

1.2.3. Indian Penal Code, 1860 and Criminal Procedure Code, 1973:

Sec. 228-A of the Indian Penal Code makes disclosure of identity of victim of certain offences punishable with upto 2 years imprisonment or fine or both. The restriction does not relate to printing or publication of judgment of High Court or Supreme Court. But keeping in view the social object of preventing social victimization or ostracism of the victim of a sexual offence for which Sec. 228 A has been enacted, it would be appropriate that in the judgments be it by the Supreme Court, High Court or Lower Court, the name of the victim should not be indicated.

Section 228A IPC and Section 327(3) Code of Criminal Procedure also specify similar bars on publication of court proceedings dealing with sexual exploitation of the child.

1.2.4. THE CABLE TELEVISION NETWORKS (Regulation) ACT, 1995 and its RULES, 1994

The Programming and Advertising Codes as per Rule 6 and 7 provide that no program or advertisement which denigrates children should be carried in cable service.

1.3. ETHICAL STANDARDS / GUIDELINES:

1.4.2. NHRC UNICEF Report (A Guidebook for the Media on Sexual Violence against Children)

MEDIA DOS AND DON'TS WHEN CREATING PROGRAMMES ON CHILD SEXUAL ABUSE AND EXPLOITATION.

(<http://nhrc.nic.in/Publications/MedGuideChild.pdf>)

DO

- ◆ Keep in mind the rights and best interests of the child. Promote a positive attitude towards the victim.
- ◆ Make programmes relevant to various target segments.
- ◆ Focus your programmes – emphasize on one or two messages.
- ◆ Before filing a story, consult resource persons and organisations in the area.
- ◆ Treat the subject with understanding and sensitivity.

- ◆ Be positive in the portrayal of the child, he/she is a victim and not a party to the crime.
- ◆ Be aware of various legal provisions, laws and regulations with regard to child rights.
- ◆ Remember, though the child is vulnerable and voiceless, he/she has the same human dignity, rights and worth as any adult.
- ◆ Meticulously verify your stories and sources.
- ◆ Identify ways to deal with problem situations.
- ◆ Provide clear action points for viewers.
- ◆ Promote gender equity and the rights of the girl child.
- ◆ Create awareness and demand for support services.
- ◆ Focus attention on the gravity of the crime.
- ◆ Make programmes to encourage a wider discussion of the sexual abuse and exploitation of children. Ensure that these are broadcast/televised/published in a sustained manner.

DON'T

- ◆ Don't disclose the identity of the victim or the victim's family.
- ◆ Don't sensationalise or glorify acts of sexual abuse or exploitation of children.
- ◆ Don't make the child re-live the abuse by asking him/her to recount the abuse/exploitation.
- ◆ Don't re-victimise the child by repeated or incessant questioning.
- ◆ Don't depict the child as insignificant.
- ◆ Don't treat the child as a sexual object.
- ◆ Don't glorify either the crime or the offender.
- ◆ Don't project the child as powerless or without legal support.
- ◆ Don't stigmatise the child, family or community.

1.4.2. UNICEF GUIDELINES ON ETHICAL REPORTAGE:

UNICEF (India) have developed these principles to assist journalists as they report on issues affecting children. They are offered as guidelines that will help media to cover children in an age-appropriate and sensitive manner.

(www.unicef.org/india/EthicalReportage.pdf)

Guidelines for interviewing children:

- ◆ Do no harm to any child; avoid questions, attitudes or comments that are judgmental, insensitive to cultural values, that place a child in danger or expose a child to humiliation, or that reactivate a child's pain and grief from traumatic events.
- ◆ Do not discriminate in choosing children to interview because of sex, race, age, religion, status, educational background or physical abilities.
- ◆ No staging: Do not ask children to tell a story or take an action that is not part of their own history.
- ◆ Ensure that the child or guardian knows they are talking with a reporter.
- ◆ Explain the purpose of the interview and its intended use.
- ◆ Obtain permission from the child and his or her guardian for all interviews, videotaping and, when possible, for documentary photographs. When possible and appropriate, this permission should be in writing. Permission must be obtained in circumstances that ensure that the child and guardian are not coerced in any way and that they understand that they are part of a story that might be disseminated locally and globally. This is usually only ensured if the permission is obtained in the child's language and if the decision is made in consultation with an adult the child trusts.
- ◆ Pay attention to where and how the child is interviewed. Limit the number of interviewers and photographers. Try to make certain that children are comfortable and able to tell their story without outside pressure, including from the interviewer. In film, video and radio interviews, consider what the choice of visual or audio background might imply about the child and her or his life and story. Ensure that the child would not be endangered or adversely affected by showing their home, community or general whereabouts.

Guidelines for reporting on Children:

- ◆ Do not further stigmatize any child; avoid categorisations or descriptions that expose a child to negative reprisals – including additional physical or

psychological harm, or to lifelong abuse, discrimination or rejection by their local communities.

- ◆ Always provide an accurate context for the child's story or image.
- ◆ Always change the name and obscure the visual identity of any child who is identified as:
 - a. A victim of sexual abuse or exploitation,
 - b. A perpetrator of physical or sexual abuse,
 - c. HIV positive, or living with AIDS, unless the child, a parent or a guardian gives fully informed consent,
 - d. Charged or convicted of a crime.
- ◆ In certain circumstances of risk or potential risk of harm or retribution, change the name and obscure the visual identity of any child who is identified as:
 - a. A current or former child combatant,
 - b. An asylum seeker, a refugee or an internal displaced person.
- ◆ In certain cases, using a child's identity – their name and/or recognizable image – is in the child's best interests. However, when the child's identity is used, they must still be protected against harm and supported through any stigmatization or reprisals. Some examples of these special cases are:
 - c. When a child initiates contact with the reporter, wanting to exercise their right to freedom of expression and their right to have their opinion heard.
 - d. When a child is part of a sustained programme of activism or social mobilization and wants to be so identified.
 - e. When a child is engaged in a psychosocial programme and claiming their name and identity is part of their healthy development.
- ◆ Confirm the accuracy of what the child has to say, either with other children or an adult, preferably with both.

- ◆ When in doubt about whether a child is at risk, report on the general situation for children rather than on an individual child, no matter how newsworthy the story.

1.4. SELF REGULATORY MECHANISMS:

1.4.1. News Broadcasting Standards Regulations, 2008 and Code of Ethics and Broadcasting Standards by the News Broadcasters Association, New Delhi.

- ◆ News Broadcasting Standards Authority (NBSA)

1.4.2. Self-Regulation Guidelines, Content Code and Certification Rules for the General Entertainment and Non-News and Current Affairs Broadcasting Sector by the Indian Broadcasting Foundation, New Delhi.

- ◆ Broadcasting Content Complaints Council (BCCC) established under Content Code and Certification Rules, 2011.

ANNEXURE XI

Anant Kumar Asthana vs. Union of India & others [WP (Civil) No 787 of 2012]

Guidelines Approved for Immediate Implementation by Delhi High Court for Protection of Privacy and Confidentiality of Children by Hospitals, Courts, CWCS and JJBS

A. FOR HOSPITALS:

- A.1. It shall be the duty of hospital or medical facility, where a child may be referred, admitted for treatment or being treated or which conducts any other medical examination/tests or provides any service to child, to ensure that no detail pertaining to identity and infringement upon privacy of such child is made available to media, unless ordered to do so by the Juvenile Justice Board or Child Welfare Committee concerned or any other court.
- A.2. Inquiry Committee: Every hospital shall have an inquiry committee in place to inquire about cases of lapses regarding to breach of privacy or confidentiality of children's identity. Inquiry committee shall examine the reasons behind such lapse and shall recommend appropriate action against those responsible for such lapses, as per law.
- A.3. Inquiry Committee shall have three members, out of which one member shall be an external person from a registered child rights organisation and it shall be headed by Chief Medical Officer of the hospital concerned. It shall be the responsibility of Chief Medical officer of hospital concerned to initiate inquiry committee meeting either on his/her own cognizance or on being complained about such lapse having been committed. Complainant, as well as, adversely affected parties, shall be given reasonable opportunity of being heard in writing, before such committee finalizes its findings. A copy of such findings shall be provided to affected parties. Inquiry shall be completed within a period of 3 months from the date of incident being reported. Chief Medical Officer shall take action as per recommendation of the Inquiry Committee within one week from the conclusion of inquiry and shall intimate all members of the Inquiry Committee about action taken. A copy of proceedings of Inquiry Committee, copy of complaint, findings along with action taken report shall be submitted to State Commission for Protection of Child Rights or National Commission

for Protection of Child Rights (Where State Commission for Protection of Child Rights does not exist) within one week from the implementation of Inquiry Committee's recommendations. The Commission concerned, upon receipt of inquiry committee case papers, shall record its satisfaction to the inquiry and if not satisfied shall take cognizance and initiate its own inquiry as per provisions of the Commission of Protection of Child Rights Act, 2005.

- A.4. In case, the person/s responsible for lapse are outside the authority of Hospital, the head of Inquiry Committee shall mention so in his/her report to State/ National Commission for Protection of Child Rights who in turn shall take up the matter with authority appropriate to cause action to be taken.
- A.5. 'Hospital' means any hospital which comes under jurisdiction of Medical Council of India and includes any pathology, clinic or facility used for medical purposes.

B. FOR COURTS

- B.1. Courts shall obliterate details leading to disclosure of identity of a child from judicial proceedings before issuing a certified copy or uploading them on the website.
- B.2. Cause lists and case titles in the cases shall not mention the name of child. Instead pseudo names i.e. "XYZ" or "ABC" shall be used to refer to a child's name.
- B.3. Registry/Reader/Alhmad of court concerned shall not accept any application as may be filed by lawyers or in-person parties, if they contain reference to the name of child, provided that in appropriate cases courts may permit so, after giving the reason in writing.
- B.4. Inspection of judicial record shall be permitted only when an undertaking is given that child's identity related details shall not be disclosed to anyone else or be used for any other purpose except for legal representation in the case concerned or any other related case by the applicant applying for inspection.
- B.5. Courts will ensure that names of children are not called at the time of hearing by the Court staff.
- B.6. After declaration of juvenility or child in any case, the Court passing such order shall obliterate the name and identity related details of such person being declared a juvenile or child from its record. For past court record, a direction to keep record in sealed cover shall be passed and application for inspection/ certified copy shall be subject to clause B1 and B4 in addition to orders passed by concerned court.

C. FOR COMPETENT AUTHORITIES UNDER J.J. ACT:

- C.1. Orders and cause list shall not mention name of child, as far as possible.
- C.2. Calling of names of children or juveniles shall not be permitted. It shall be duty of lawyer concerned, family members of child or probation officer or welfare officer from the children home/observation home concerned to ensure that concerned child is produced when the matter is taken up for hearing and appropriate directions in this regard will be issued to all concerned so that child does not suffer in any way due to failing from appearing before authorities. Proactive efforts from Juvenile Justice Board and Child Welfare Committees are to be made in this regard and to ensure that child does not suffer in any way because of such procedural requirements.
- C.3. Every Juvenile Justice Board, Child Welfare Committee, institutions for juveniles in conflict with law and children in need of care and protection shall have notice boards prominently visible stating that disclosure of identity of a child is punishable under Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2000 and those who happen to witness any proceedings before such competent authorities are deemed to have consented to abide by such condition

ANNEXURE XII

Statement of Year-wise Adoption of State Rules

Year	States/UTs	No. of States
2009	Andaman & Nicobar Islands, Chandigarh, Daman & Diu, Dadra & Nagar Haveli, Lakshadweep	5
2010	Arunachal Pradesh, Chhattisgarh, Odisha, Sikkim	4
2011	Andhra Pradesh, Assam, Bihar, Delhi, Haryana, Himachal Pradesh, Jharkhand, Kerala, Madhya Pradesh, Maharashtra, Meghalaya, Nagaland, Puducherry, Punjab, Rajasthan, Tamil Nadu, Tripura, Uttar Pradesh, Uttarakhand	19
2012	Goa, Gujarat, Karnataka, West Bengal	4
2013	Manipur, Mizoram	2
<p>Source: State RTE Notifications available at http://mhrd.gov.in/rte_rules accessed on 16 October 2015.</p> <p>Note: As per Section 1(2) of RTE Act, 2009, the Act extends to the whole of India except the State of Jammu and Kashmir.</p>		

ANNEXURES XIII

Proposed Mechanism for monitoring of The Right to Education Act, 2009

2015-2016

Introduction

With insertion of the Article 21A in the Constitution, the State shall provide free and compulsory education to all children of the age of 6 to 14 years; it became imperative to enact a law to implement the provision of Article 21A of the Constitution.

Accordingly, the Right of Children to Free and Compulsory Education (RTE) Act, 2009 was passed to make education a fundamental right. The RTE Act came into force on 1st April 2010. The responsibility of monitoring the implementation of the Act has been given to National Commission for Protection of Child Rights (NCPCR) under Section 31 of the RTE Act. Accordingly, the Commission has been mandated under Section 31 to perform the following functions, namely:

- a) Examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation;
- b) Inquire into complaints relating to child's right to free and compulsory education; and
- c) Take necessary steps as provided under Sections 15 and 24 of the said Commission for Protection of Child Rights Act.

The National Commission for Protection of Child Rights while reviewing its role of monitoring the implementation of the Act realizes that the monitoring strategy/ activities need to be relooked at or revised. Accordingly, it was decided that the Education Cell of the Commission would go through the provisions provided for RTE monitoring in different documents including RTE Act, RTE Rules, SSA Framework of Implementation etc. and come up with a revised strategy for the effective monitoring of the implementation of the RTE Act, 2009. Therefore, after reviewing the relevant documents, the Education Team headed by the Member (Education) with the guidance of Prof. Mukhopadhyay came up with the revised monitoring strategy/ programme.

1. Monitoring of the roles performed by SMCs and Local Authorities.
2. Monitoring as per SSA framework of implementation.

3. Use of e-baalnidaan – online complaint management system of NCPCR–taking cognizance of the complaints and their redressal.
4. Conducting surveys, seminars, studies, workshops etc.
5. Coordination with SCPCRs for effective monitoring of the Act.
6. Coordination and collaboration with other national and state agencies as mentioned in the Act such as Academic authorities, National Advisory Council, State Advisory Council etc.

While reviewing the roles and responsibilities provided to different authorities and stakeholders under the Act, it was noted that these authorities i.e. School Management Committees (SMCs), local authorities such as Gram Panchayats, BEO, DEO, play a vital role in implementation of the Act. Hence, it is important to monitor the existence and functioning of these authorities. Accordingly, a framework has been developed delineating the role and functions of these authorities as provided under different sections of RTE Act, 2009 and Model Rules, 2010 and strategies to be adopted by NCPCR to monitor the performance of their roles in the implementation of the RTE Act, 2009. Apart from SMCs and local authorities, institutions like NCERT, NCTE also play a key role in the area of teacher training and curriculum development. Thus, the detailed framework of monitoring these authorities is as under:

Stakeholder	Function/Responsibility	Present Monitoring Activity	Proposed Monitoring Activity	Activity for Awareness
Local Authority	<ul style="list-style-type: none"> a) Provide free and compulsory elementary education to every child b) Ensure that the child belonging to weaker section and the child belonging to a disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds; c) Maintain records of children up to the age of fourteen years residing within its jurisdiction, in such manner as may be prescribed; d) Ensure and monitor admission, attendance and completion of elementary education by every child residing within its jurisdiction; e) Provide infrastructure including school building, teaching staff and learning material; f) Provide special training facility specified in section 4; g) Ensure good quality elementary education conforming to the standards and norms specified in the Schedule; h) Ensure timely prescribing of curriculum and courses of study for elementary education; i) Provide training facility for teachers; j) Ensure admission of children of migrant families; k) Monitor functioning of schools within its jurisdiction; and l) Decide the academic calendar. <p>Note: As per section 32, state authorities have to set up Grievance Redressal Mechanism (GRM)</p>	Complaints received in NCPDR	<ul style="list-style-type: none"> A format will be developed d) Format- as above f) Format- as above i) Information from State Education Department Format- As above 	Social Monitoring (Sec. 8b) Note: GRM can be strengthened through seminars. Connecting with proposed Helpline

Stakeholder	Function/Responsibility	Present Monitoring Activity	Proposed Monitoring Activity	Activity for Awareness
School Management Committee	<p>The School Management Committee shall perform the following functions, namely:</p> <ul style="list-style-type: none"> a) Monitor the working of the school; b) Prepare and recommend school development plan; c) Monitor the utilization of the grants received from the appropriate Government or local authority or any other source; and d) Perform such other functions as may be prescribed; 		<p>b) A survey may be conducted to know whether proper school development plan is being prepared. To find out reason of non-functionality of SMCs. Identify main factors that will help in improving the functioning to SMC.</p>	<p>**** Implementation of recommendations in National Convention Report</p>

Stakeholder	Function/Responsibility	Present Monitoring Activity	Proposed Monitoring Activity	Activity for Awareness
	<p>1) The said Committee shall, in addition to the functions specified in clauses (a) to (d) of sub-section (2) of section 21, perform the following functions namely:</p> <ul style="list-style-type: none"> a) Communicate in simple and creative ways to the population in the neighbourhood of the school, the rights of the child as enunciated in the Act; as also the duties of the appropriate Government, local authority, school, parent and guardians; b) Ensure the implementation of clauses (a) and (e) of section 24, and of section 28; c) Monitor that teachers are not burdened with non-academic duties other than those specified in section 27; d) Ensure the enrolment and continued attendance of all the children from the neighbourhood in the school; e) Monitor the maintenance of the norms and standards specified in the Schedule; f) Bring to the notice of the local authority any deviation from the rights of the child, in particular mental and physical harassment of children, denial of admission, and timely provision of free entitlements as per sub-section (2) of section 3; g) Identify the needs, prepare a plan, and monitor the implementation of the provisions of section 4; 			

Stakeholder	Function/Responsibility	Present Monitoring Activity	Proposed Monitoring Activity	Activity for Awareness
	<p>h) Monitor the identification and enrolment of, and facilities for education of children with disability, and ensure their participation in, and completion of elementary education;</p> <p>i) Monitor the implementation of the mid-day meal in the school;</p> <p>j) Prepare and annual account of receipts and expenditure of the school.</p> <p>2) Any money received by the said Committee for the discharge of its functions under this Act, shall be kept in a separate account, to be audited annually.</p> <p>3) The accounts referred to in clause (j) to sub-rule (6) and in sub-rule (7) should be signed by the chairperson or vice-chairperson and convener of the said Committee and made available to the local authority within one month of their preparation.</p>			
Parents/ guardian	It shall be the duty of every parent or guardian to admit or cause to be admitted his or her child or ward, as the case may be, to an elementary education in the neighbourhood school.			<ul style="list-style-type: none"> Action taken by State Authority for awareness

Stakeholder	Function/Responsibility	Present Monitoring Activity	Proposed Monitoring Activity	Activity for Awareness
Academic Authority	<p>a) Formulate the relevant and age appropriate syllabus and text books and other learning material; (NCERT has been notified for this activity)</p> <p>b) Develop in-service teacher training design; and (NCTE has been notified for this activity)</p> <p>c) Prepare guidelines for putting into practice continuous and comprehensive evaluation (NCERT has been notified for this activity)</p>			<ul style="list-style-type: none"> Seek timely information
National Advisory Council	<p>1. The National Advisory Council shall function in an advisory capacity.</p> <p>2. NAC will perform the following function</p> <p>(a) Review</p> <ul style="list-style-type: none"> Norms and standards specified in the Schedule Compliance with teacher qualifications and trainings Implementation of section 29 i.e. Constitution of the National Advisory Council <p>(b) Commission studies and research for the effective implementation of the RTE Act(c)</p> <p>(c) Coordinate with the State Advisory Councils</p> <p>(d) act as an interface between the public and the media and the Central Government in creating awareness, mobilization and positive environment for the implementation</p>			

Stakeholder	Function/Responsibility	Present Monitoring Activity	Proposed Monitoring Activity	Activity for Awareness
	3. The National Advisory Council shall prepare reports relating to the reviews, studies and research undertaken by it and furnish the same to the Central Government.			
State Advisor Council				
Central Government	The Central Government and the state Governments have concurrent responsibility for Providing funds for carrying out the provisions of this Act,			

Since the existing authorities have these responsibilities (as per the list mentioned in SSA framework for implementation and monitoring):

SSA 2010	Indicators	Responsible stakeholder/under RTE Act	Present Monitoring Mechanism	Proposed Monitoring Mechanism	Activity for Awareness	Source of Data
8.3.2	Children Out-of-School	Sections Under RTE Act, 2009				
(a)	<i>In Rural Areas (children residing in village)</i>					
(i)	Never Enrolled	SMC – Section 3, Rule 6 (d) – ensure the enrolment & continued attendance of all children from the neighbourhood in the school Local Authority – Section 9 (e)	Monitoring through Complaints	Social Monitoring through SMCs	Regular follow-up with local authorities with the help of Helpline in the month of June/ July. (All the contact details of education officials including BEOs, DEOs, SMC Chairperson can be collected)	Census 2011 Data on 'Population attending educational institutions by age for 6-14 years age group'

SSA 2010	Indicators	Responsible stakeholder/under RTE Act	Sections Under RTE Act, 2009	Present Monitoring Mechanism	Proposed Monitoring Mechanism	Activity for Awareness	Source of Data
(ii)	Dropped Out				- Through MDM report - Attendance Monitoring can be done by SMCs. For SMC monitoring	DISE Reports (dropout rate)	
(iii)	Temporarily Absent						
(b)	<i>In Rural Areas (children residing outside village)</i>						
(i)	Permanent Migrants	Local authority		Complaints	Through MDM report to be obtained from Local Authority and randomly call the selected districts through Helpline		Local Authority through Helpline
(ii)	Seasonal Migrants						

SSA 2010	Indicators	Responsible stakeholder/under RTE Act Sections Under RTE Act, 2009	Present Monitoring Mechanism	Proposed Monitoring Mechanism	Activity for Awareness	Source of Data
(iii)	In Observation homes, shelter homes	District Child Protection Unit	Education Division is not maintaining any data/info.	Data source will be Helpline and monitoring through CWCs	Awareness through CWCs	ICPS data
(b)	In Urban Areas					
(i)	Street/Homeless	WCD data	Street to School Campaign	Street to School Campaign	Street to School Campaign	Survey and census data
(ii)	Seasonal Migrants	Local Authority	No Monitoring	Local Authorities/ complaints and Helpline	Proposed Poster campaign	Local Authority
(iii)	In Observation homes, shelter homes	District Child Protection Unit	No Monitoring	Data source will be Helpline and monitoring through CWCs	Awareness through CWCs	ICPS Data
(iv)	Child Labour	Child Labour/ Child Welfare Depts.	No Monitoring	Helpline	Proposed campaign in collaboration with NCPDR's Child Labour Unit	Census and Labour Dept.

SSA 2010	Indicators	Responsible stakeholder/under RTE Act	Sections Under RTE Act, 2009	Present Monitoring Mechanism	Proposed Monitoring Mechanism	Activity for Awareness	Source of Data
8.3.3	For Children in-school						
(d)	For Children in Government Schools						
(i)	Provision of neighbourhood Government Schools	Local Authority		Complaints	Through proposed helpline and District Resource Persons (DRPs)	Not required	State Education Departments
1	Requisite number of classrooms	Local authority	Section 3 Rule 6(e): monitor the maintenance of the norms and standards specified in the Schedule	Complaints	Social Monitoring of SMC through DRPs.	Awareness campaign for SMC and local public through workshops, seminars and radio campaign (community radio)	DISE/Reports of the MHRD, studies by the Commission
2	Appropriate PTR	SMC/Local Authority		Complaints	Random data collection using the Help line and physical data collection/ verification by the selected		
3	School hours	SMC		Complaints			
4	Instructional hours of Teachers	SMC		Complaints			
5	Infrastructure	SMC		Complaints			
6	Appropriate use of Infrastructure	SMC/Local Authority		Complaints			

SSA 2010	Indicators	Responsible stakeholder/under RTE Act	Sections Under RTE Act, 2009	Present Monitoring Mechanism	Proposed Monitoring Mechanism	Activity for Awareness	Source of Data
(ii)	Access to School						
1	Physical	Local Authority/ SMC		Complaints	Social Monitoring of SMC through DRPs. Monitoring of GRM	Through Helpline	DISE
2	Social	SMC/Local Authority		Complaints	Social Monitoring of SMC through DRPs. Monitoring of GRM	Through Helpline for creating awareness of SMC members. Radio campaign for awareness among community members	DISE
(iii)	Admission process (Related to private schools)						

SSA 2010	Indicators	Responsible stakeholder/under RTE Act	Responsible stakeholder/under RTE Act, 2009	Present Monitoring Mechanism	Proposed Monitoring Mechanism	Activity for Awareness	Source of Data
1	Denials	SMC/Local Authority	Section 3 Rule 6(f) – bring in notice to the local authority. Denial of admission	Complaint	Complaint redressal	Helpline and Monitoring of awareness campaign of the States through SCPCRs.	Complaints
2	Capitation Fee	SMC/Local Authority	Section 3 Rule 6(f) – bring in notice to the local authority. Free entitlements	Complaint	Strengthening of GRM through Helpline.	NCPCR/SCPCR/ Local Authority	
3	Application Fee	Local Authority		Complaint			
4	Screening Procedure	Local Authority		Complaint			
5	Demand for Affidavits	Local Authority	Monitoring through SMCs	Complaint			
6	Anytime Admission	SMC/Local Authority	– Section 3 Rule 6 (f) – bring in notice to the local authority. Denial of admission	Complaint			

SSA 2010	Indicators	Responsible stakeholder/under RTE Act Sections Under RTE Act, 2009	Present Monitoring Mechanism	Proposed Monitoring Mechanism	Activity for Awareness	Source of Data
(iv)	Entitlements (section 9 - f)		Complaint			
1	Tuition Fee	SMC/Local Authority	Complaint	Complaint, Social Monitoring, Strengthening of GRM through Helpline.	awareness campaign of the States through SCPCRs.	Complaint data
2	Transport	Local Authority	Complaint	Complaint, Social Monitoring, Strengthening of GRM through Helpline.	awareness campaign of the States through SCPCRs.	Complaint data
3	Textbooks, notebooks, stationery	Local Authority/ SMC	Complaint	Complaint, Social Monitoring, Strengthening of GRM through Helpline.	awareness campaign of the States through SCPCRs.	Complaint data. State reports

SSA 2010	Indicators	Responsible stakeholder/under RTE Act	Present Monitoring Mechanism	Proposed Monitoring Mechanism	Activity for Awareness	Source of Data
4	Uniforms	Local Authority/ SMC	Complaint	Complaint, Social Monitoring, Strengthening of GRM through Helpline.	awareness campaign of the States through SCPCRs.	Complaint data. State reports.
5	Library with books, newspapers, magazines	Local Authority/ SMC	Complaint	Complaint, Social Monitoring of SMCs, Strengthening of GRM through Helpline.	awareness campaign of the States through SCPCRs.	Complaint data. State reports.
6	Sports equipment	Local Authority/ SMC	Complaint	Complaint, Social Monitoring of SMCs, Strengthening of GRM through Helpline.	awareness campaign of the States through SCPCRs.	Complaint data. State reports.

SSA 2010	Indicators	Responsible stakeholder/under RTE Act Sections Under RTE Act, 2009	Present Monitoring Mechanism	Proposed Monitoring Mechanism	Activity for Awareness	Source of Data
7	Play Material	Local Authority/ SMC	Complaint	Complaint, Social Monitoring of SMCs, Strengthening of GRM through Helpline.	awareness campaign of the States through SCPCRs.	Complaint data. State reports.
8	Mid-Day Meal	Local Authority/ SMC	Complaint	Complaint, Social Monitoring of SMCs, Strengthening of GRM through Helpline. Tracking of attendance records of MDM through DRPs.* A digitized mechanism would be developed for tracking purpose.	awareness campaign of the States through SCPCRs.	Complaint data. State MDM authority

SSA 2010	Indicators	Responsible stakeholder/under RTE Act	Sections Under RTE Act, 2009	Present Monitoring Mechanism	Proposed Monitoring Mechanism	Activity for Awareness	Source of Data
9	Special Training for Age-appropriate Education	Local Authority and SMC	Section 3, Rule 6 (g) Section 8 (e), Section 9 (g)	Complaint	Complaint, Social Monitoring of SMC, Helpline.	awareness campaign of the States through SCPCRs.	Complaint data. State reports.
10	Transfer Certificates	Local Authority/ SMC	SMC to monitor under section 24, Rule 1	Complaint	Complaint, Strengthening of GRM through Helpline.	awareness campaign of the States through SCPCRs.	Complaint data. State reports.
11	Completion Certificates	Local Authority/ SMC		Complaint	Complaint, Social Strengthening of GRM through Helpline.	awareness campaign of the States through SCPCRs.	Complaint data. State reports.
12	Other expenses	Local Authority/ SMC	SMC to monitor under section 3, Rule 6 (f)	Complaint	Complaint, Strengthening of SMCs and GRM through Helpline.		Complaint data.

SSA 2010	Indicators	Responsible stakeholder/under RTE Act	Present Monitoring Mechanism	Proposed Monitoring Mechanism	Activity for Awareness	Source of Data
(v)	Continuous and Comprehensive Evaluation	Academic authority — NCERT at national, SCERT at State level, May be DIETs at District Level. NCTE for teacher training including on child rights				
1	No annual Exam	Local Authority/ SMC	Complaints	Social monitoring of SMCs	Strengthening through District Resource Persons and SMCs	Complaints
2	No failure					
3	No detention					

SSA 2010	Indicators	Responsible stakeholder/under RTE Act	Sections Under RTE Act, 2009	Present Monitoring Mechanism	Proposed Monitoring Mechanism	Activity for Awareness	Source of Data
4	Prescribed curriculum and books	NCERT/SCERT for prescribing curriculum and books. Physical distribution to be monitored at the level of local authority and SMCs	NCERT & NCTE is appointed as academic authority by the central government on 31.03.2010 – Sec 29 (2) of Act and Section 23 (2) of Rules	Complaints	Information can be sought from academic authority. Information from SMCs through helpline/ DRPs		Letter has been written to NCERT & NCTE seeking information on activities undertaken under section 29.
5	Prescribed system of evaluation						
6	Adherence to Constitutional Values						
(vi)	Classroom Transaction	Academic authority -NCERT					
1	No discrimination	SMC/Local Authority	Responsibility of local authority under section 9©. SMC to monitor under section 3, Rule 6 (f)	Complaints	Complaint, Strengthening of SMCs and GRM through Helpline.	Poster campaigns through SCPCRs/ SMCs	Complaints
2	No corporal punishment						

SSA 2010	Indicators	Responsible stakeholder/under RTE Act	Present Monitoring Mechanism	Proposed Monitoring Mechanism	Activity for Awareness	Source of Data
3	Appropriate Teaching methods	SMC/Local Authority	Complaints	Information can be sought from academic authority.		Letter has been written to NCERT & NCTE seeking information on activities undertaken under section 29.
4	Appropriate Evaluation Systems	NCERT & NCTE is appointed as academic authority by the central government on 31.03.2010 - Sec 29 (2) of Act and Section 23 (2) of Rules		Information from SMCs through helpline/ DRPs		
(vii)	School Management Committee					
1	Appointments as per rules	Local Authority	Complaints	Through helpline and DRPs. Social monitoring of SMCs through DRPs.	Proposed Helpline	Proposed Helpline
2	Regular meetings	Section		Regular random feedback through proposed helpline		
3	Teacher Accountability	Local authority/ SMC				
4	Preparation of School Development Plan					
5	Other Responsibilities					

SSA 2010	Indicators	Responsible stakeholder/under RTE Act	Present Monitoring Mechanism	Proposed Monitoring Mechanism	Activity for Awareness	Source of Data
(e)	For Children in Private Aided Schools	Sections Under RTE Act, 2009				
(i)	Reservation for children from weaker sections and disadvantaged groups in proportion with aid	Local authority/ concerned board	Complaints	Complaints	Through SCPCR	
(f)	For Children in Private Un-aided Schools					
(i)	25% reservation for children from weaker sections and disadvantaged groups	Local authority	Complaints	Complaints	Through SCPCR	

SSA 2010	Indicators	Responsible stakeholder/under RTE Act	Present Monitoring Mechanism	Proposed Monitoring Mechanism	Activity for Awareness	Source of Data
(g)	For children in specified category schools (KV, Navodaya and Sainik Schools)	Sections Under RTE Act, 2009				
(i)	25% reservation for children from weaker sections and disadvantaged groups	Local Authority/ KV/Navodaya/ Sainik schools	Complaint received in NCPCR	Complaint received in NCPCR	Through SCPCR	

Note: SSA framework guidelines 2009 also mention following activities:

8.3.4 ACTIVITIES	Proposed Activity
Registration of Complaints	Besides present mechanism, a proposal on introducing the Helpline is in process which will outline the entire process of complaint redressal including registration of complaints.
Investigation of Complaints	The commission will conduct on-spot inquiries, if necessary.
Response to Complaints	A proposal on introducing the Helpline is in process which will outline the entire process of complaint redressal including response to complaints.
Appeal Process	The complaints received will be taken as appeal as per section 32 (3) by SCPCR/ concerned authorities. Such complaints will be forwarded to SCPCR/concerned authorities.

8.4 It also highlights the basic principles adopted by NCPCR:

8.4.1		
i)	Monitoring at local level	
ii)	Awareness generation	
iii)	Capacity building of SMCs and civil society groups	
iv)		

Different stakeholders:

1. Local Authority
2. School Management Committee (SMCs)
3. Parents/guardian
4. Academic Authority
5. National Advisory Council
6. State Advisor Council
7. Central Government

Stakeholder	Function/Responsibility
Local Authority	<ul style="list-style-type: none"> a) Provide free and compulsory elementary education to every child b) Ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds; c) Maintain records of children up to the age of fourteen years residing within its jurisdiction, in such manner as may be prescribed; d) Ensure and monitor admission, attendance and completion of elementary education by every child residing within its jurisdiction; e) Provide infrastructure including school building, teaching staff and learning material; f) Provide special training facility specified in section 4; g) Ensure good quality elementary education conforming to the standards and norms specified in the Schedule; h) Ensure timely prescribing of curriculum and courses of study for elementary education; i) Provide training facility for teachers; j) Ensure admission of children of migrant families; k) Monitor functioning of schools within its jurisdiction; and l) Decide the academic calendar. <p>Note: As per section 32, state authorities have to set up Grievance Redressal Mechanism (GRM)</p>

Stakeholder	Function/Responsibility
School Management Committee	<ol style="list-style-type: none"> 1. The School Management Committee shall perform the following functions, namely; <ol style="list-style-type: none"> a) Monitor the working of the school; b) Prepare and recommend school development plan; c) Monitor the utilization of the grants received from the appropriate Government or local authority or any other source; and a) Perform such other functions as may be prescribed; 2. The said Committee shall, in addition to the functions specified in clauses (a) to (d) of sub-section (2) of section 21, the perform the following functions namely: <ol style="list-style-type: none"> a) Communicate in simple and creative ways to the population in the neighbourhood of the school, the rights of the child as enunciated in the Act; as also the duties of the appropriate Government, local authority, school, parent and guardians; b) Ensure the implementation of clauses (a) and (e) of section 24, and of section 28; c) Monitor that teachers are not burdened with non-academic duties other than those specified in section 27; d) Ensure the enrolment and continued attendance of all the children from the neighbourhood in the school; e) Monitor the maintenance of the norms and standards specified in the Schedule; f) Bring to the notice of the local authority any deviation from the rights of the child, in particular mental and physical harassment of children, denial of admission, and timely provision of free entitlements as per sub-section (2) of section 3;

Stakeholder	Function/Responsibility
	<ul style="list-style-type: none"> g) Identify the needs, prepare a plan, and monitor the implementation of the provisions of section 4; h) Monitor the identification and enrolment of, and facilities for education of children with disability, and ensure their participation in, and completion of elementary education; i) Monitor the implementation of the mid-day meal in the school; h) Prepare and annual account of receipts and expenditure of the school. <p>3. Any money received by the said Committee for the discharge of its functions under this Act, shall be kept in a separate account, to be audited annually.</p> <p>4. The accounts referred to in clause (j) to sub-rule (6) and in sub-rule (7) should be signed by the chairperson or vice-chairperson and convener of the said Committee and made available to the local authority within one month of their preparation.</p>
Parents/guardian	<p>It shall be the duty of every parent or guardian to admit or cause to be admitted his or her child or ward, as the case may be, to an elementary education in the neighbourhood school.</p>
Academic Authority	<ul style="list-style-type: none"> 1. Formulate the relevant and age appropriate syllabus and textbooks and other learning material; (NCERT has been notified for this activity) 2. Develop in-service teacher training design; and (NCTE has been notified for this activity) 3. Prepare guidelines for putting into practice continuous and comprehensive evaluation (NCERT has been notified for this activity).

Stakeholder	Function/Responsibility
National Advisory Council	<ol style="list-style-type: none"> 1. The National Advisory Council shall function in an advisory capacity. 2. NAC will perform the following function <ol style="list-style-type: none"> (a) Review <ul style="list-style-type: none"> ● Norms and standards specified in the Schedule ● Compliance with teacher qualifications and trainings ● Implementation of section 29 i.e. Constitution of the National Advisory Council (b) Commission studies and research for the effective implementation of the RTE Act (c) Coordinate with the State Advisory Councils (d) Act as an interface between the public and the media and the Central Government in creating awareness, mobilization and positive environment for the implementation 3. The National Advisory Council shall prepare reports relating to the reviews, studies and research undertaken by it and furnish the same to the Central Government.
State Advisor Council	
Central Government	The Central Government and the State Governments have concurrent responsibility for Providing funds for carrying out the provisions of this Act,
NCPCR/SCPCR	<p>Examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation;</p> <p>Inquire into complaints relating to child's right to free and compulsory education; and</p> <p>Take necessary steps as provided under Sections 15 and 24 of the said Commission for Protection of Child Rights Act.</p>

The new initiatives

1. Helpline

National Commission for Protection of Child Rights (NCPCR;) has been mandated under Section 31 of Right of Children to Free and Compulsory Education Act 2009, to monitor the RTE Act, 2009. For the monitoring of the Act; provision for a helpline has been provided under section 26 of the RTE Rules 2010. As per the rules “The National Commission for Protection of Child Rights may set up a child helpline to register complaints regarding violation of rights of the child under the Act, which may be monitored by it through a transparent on-line mechanism.” The SSA Framework for Implementation, Chapter 8, under the section on “What can NCPCR monitors” (page 132) states “helpline, which will allow citizens to call in and receive information and register complaints.

In view of the provisions provided under the RTE Act, 2009 and the RTE Rules 2010, it is proposed that an initiative may be taken up to set up a helpline in Education Division of the Commission. It is envisaged that the helpline once set up would create awareness and provide information. In addition it is also envisaged to achieve the following: (a) help in generating more complaints and keep record of actual number of complaints, (b) facilitate registering complaints on e-baalnidaan, (c) quick and effective redressal of the complaints, (d) help referring matter to the concern authority/ies, (e) help activate the existing grievance redressal mechanism of the States/UTs, (f) bring convergence amongst the authorities and departments at grassroots/district levels; these departments are: Education, Women & Child Development, Labour Department, Drinking Water Supply, Rural and Urban local bodies and (g) linkage and monitoring of School Management Committee in redressing the grievances.

2. Block Resource Persons (BRPs) and District Resource Persons (DRPs)

The most effective monitoring can and must be done at the local level through an institutionalised mechanism. The SMCs are in fact the ideal unit for a monitoring mechanism at the ground level. NCPCR will therefore gear its efforts towards trying to establish links with the SMCs in grounding a monitoring system. The link i.e. BRPs/DRPs may assign following activities:

- Awareness generation: to ensure that the State Education Departments shall generate awareness among SMC members about different provisions of RTE.
- Coordination: to coordinate with local authority regarding its functions, for speedy redressal of grievances received on helpline, strengthening of GRM, to ensure relevant issues are taken up in SMC meetings, identification of volunteers

- Verification of complaints
 - Monitoring of SMCs meetings
3. Annual consultation meeting with different stakeholders
 4. Including child rights and child related laws in teacher training curriculum
 5. Review of the implementation of CCE
 6. Review of provisions of minority institutions

ANNEXURE XIV

National Commission for Protection of Child Rights Summary of Recommendations on Out of School Children

A Consultation cum Review Meeting on 'Devising Pathways for Re-engaging Out of School Children' (OoSC) was organised by NCPDR in collaboration with Ministry of HRD and NCERT held on 4th-5th April 2016 at the Constitution Club of India, New Delhi.

Members of CAGE sub-Committee on the OoSC, Secretaries, Department of Education of various States/UTs, representatives from Ministries of Women and Child Development, MHRD, Labor and Employment, Tribal Affairs, Social Justice and Empowerment, Labour and Employment, Minority Affairs, State Councils of Educational Research and Training (SCERTs), Chairpersons and one Member from State Commission for Protection of Child Rights (SCPCRs) attended the said consultation cum review meeting.

The summary of recommendations emerging from this meeting are categorised as under, categorised as, **Identification, Tracking and Re-engagement** of Out of School Children (OoSC).

1. Definition:

- i. Arriving at a standardized and consolidated definition of Out of School Children (OoSC) across the country is required since each State/UT have their own definition and method of identification.
- ii. If a child absents from his/her school for 30 consecutive working days, he/she should be treated as drop out child.
- iii. A child 6-14 years of age will be considered out of school if he / she has never been enrolled in an elementary school or if after enrolment has been absent from school without prior intimation for reasons of absence for a period of 30 days or more.
- iv. A child never enrolled in school (as defined in 2(n) of RTE Act, 2009) for formal education.
- v. A child once enrolled into formal system of education/school, if does not complete 8 years of compulsory elementary education, should be treated as out of school child.

2. Identification

- i. All such children who have never been mapped should be treated as OoSC and their mapping should be done.
- ii. Identification of various reasons responsible for children being out-of-school should be done.

3. Prevention

- i. **Concerted efforts** should be made for framing preventive strategies/interventions for drop-out and non-enrolment as well as **curative strategies to re-engage** out-of-school children.
- ii. Education being a social issue, **participation of the community is crucial** for prevention of Out of School Children is not possible. Education Volunteers should be engaged at District and Block levels who would ensure prevention and re-engagement of OoSC.

- iii. **Focus on preventive strategies** of seasonal migrant child should be emphasised. Seasonal Hostels for Migrant Children in convergence with the Ministry of Labour, Ministry of Tribal Welfare, Ministry of Women and Child Development and Sarva Siksha Abhiyan should be established.

4. Tracking

1. Devising new strategies/mechanism for collecting reliable data on different categories of out-of-school children as per the above definition. A correct and effective method of data collection needs to be established to have the exact figure of out of school children.
2. **Technological innovations** such as **bar coding technique, digitalized attendance monitoring, voice detection attendance** and other available and affordable technology should be used for mapping real time attendance of children. **Attendance should also be monitored during 'Mid Day Meal (MDM)',** which can give a realistic picture of the number of children attending in the school.
3. **Mapping of children in conflict with law (CICL) and children in need of care and protection (CNCP), 'Divyang' (Special Children)** who are out of school should also be done. There should be inter-departmental convergence between department of Women and Child Development, Social Justice and Education for this purpose.
4. **Best practice reported by Madhya Pradesh Government** wherein all the data pertaining to **Out of School Children** is digitized, for example, whether it is health status, education status etc. Uniforms, scholarships, text books are transacted online through Government portal, could be adopted. The **School Assessment Program of Madhya Pradesh** is comprehensive and can be replicated in other States.
5. **Convergence on issues of OoSC between Ministries of Women and Child Development, Human Resource Development, Tribal Welfare, Labour and Employment and Social Welfare, Minorities** is essential.
6. **Village Education Registers** maintained in each school for mapping of school going children should be computerized. MIS data system should be created at a centralized level.
7. **Support of Non-government organizations and volunteers** should be taken to conduct mega surveys during household surveys for admissions of OoSC, in coordination with School Heads, AWWs, ASHAs, PRIs, CWCs, DCPUs and CCIs.
8. **Mapping of children going to Madarsas, Vedic Pathshala and any other faith based non formal institutions and unrecognised schools** should be done. Madarsas and Vedic Pathshala should be affiliated to their respective Board and should follow the state approved curriculum in addition to religious studies.


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Getting affiliated to Boards shall facilitate mapping of such children and they shall not be considered out of school.

9. **Strategy for migrant labour and seasonal migrant and community migrant children could be the same.** As part of strategy for tracking community/seasonal migrant data should be maintained in a **separate register** by the School Head and cross checked by the PRI. This data should be fed in MIS and updated in UDISE system. The class teacher should provide a **migration certificate** mentioning status of syllabus taught. Syllabus and books from school before seasonal migration should also be provided to such children who are tracked as seasonal/community migrant child. This migration certificate should contain **UDISE code of the school** and should be countersigned by the Head of the school. The register should be reviewed periodically by the SMCs during meetings.
10. If a child is absent from his/her school 3 working days, class teacher shall inquire from his/her classmates.
 - a. After this if the child absents for 7 working days (including these 3 working days) from his/her school ,with the consent the HM ,the class teacher will meet his/her parents and persuade them to send his/her child to the school.
 - b. If even after this if the student is absent for next 7 working days from his/her school, the HM will meet his parents and convince them to send their child to school.
 - c. In this way if the student is absent from his/her school for 21 working days then the student is treated as potential drop out. Now the SMC of the school will meet his/her parents and convince them to send their child to school.
 - d. However, if the child is absent for 30 consecutive working days then he or she is declared "DROP OUT" child/ OoSC. These drop out/ OoSC children should receive special attention to prevent the child from becoming a permanent drop out.
 - e. After identifying a child as OoSC, head of school should report it on UDISE data and local PRI or urban local body representative and DEO immediately.
 - f. State should take steps to map children without guardians/parents, children at railway platform/ bus stand, street children etc.

5. Re-Engagement

i. Reviewed of RTE Act.

The RTE Act, 2009 under section – 11, mandates the state to provide early childhood care and education (ECCE), with a view to prepare children above the age of three years for elementary education. The appropriate government shall make arrangements to provide ECCE for all children until they complete the age of six years.



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- a. Out of the six components of ICDS, one is Education. Hence, the children in ECCE centres should receive benefits from Sarva Siksha Abhiyan (SSA) for the education component of ECCE such as uniform, books etc.
 - b. Convergence in Anganwadi Centres and Government Schools should be provisioned for seamlessness; for example, it's a common phenomenon that transitioning of a child from a play school to private school happens automatically due to convergence between the both.
 - c. Also, proper syllabus and curriculum should be prescribed for AWC. [NCPCR is in process of preparing recommendations regarding modality of the same.]
- ii. **A dedicated Education Helpline (Solution Platform) for children** across the country should be established. The said Helpline can help in identification, data collection and surveys through outbound calls in migration prone areas as well as communities. [The proposal for setting up such Education Helpline has already been submitted by NCPCR to MHRD for consideration and approval].
 - iii. **Education being a social issue, participation of the community is crucial** without which prevention of Out of School Children is not possible. Further, under the RTE Act, 2009, the important administrative and other roles are assigned to School Management Committee (SMC) at the School level. Placement of **District Resource Persons (DRPs)** to kick start the entire process of identify and re-engage OoSC shall be piloted by NCPCR. DRPs who could be referred as 'Siksha Prehris' would be positioned in each district of the country to assist in monitoring the implementation of the said RTE, Act, 2009 with a focus on identification, tracking and re-engagement of the Out of School Children. Initially, it will be taken on pilot basis in 4 states across the country. DRPs will also establish links with the SMCs for ensuring an effective monitoring mechanism. [The proposal for the said purpose has already been submitted by NCPCR to MHRD for consideration and approval.]
 - iv. Commission recommends **skill and interest based vocational training in schools**. The sphere of co-curricular activities should be broadened and more interesting and relevant interest based skills, could also prepare children for employment/vocation oriented skills after they finish their 8th class, should be introduced in schools. The vocational trades should be based on cluster based approach. DIET should identify such vocational trade in linkages with NSDC as per the occupational standards set by NSDC. NCERT and SCERT can play an important role for facilitating DIETs in the whole process.


The study material for children in schools should be in their mother tongue language, to encourage OoSC towards mainstreaming.

- vi. **School Management Committees (SMC)** should play a crucial role in identification and re-engagement of Out of School Children (OoSC). **Inclusion of grandparents as members of School Management Committees should be done to encourage**


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participation of children in schools. Convergence between SMC members and other such SMCs of various schools in a district through the means of Social Media should be done (Example through Whats App groups etc.)

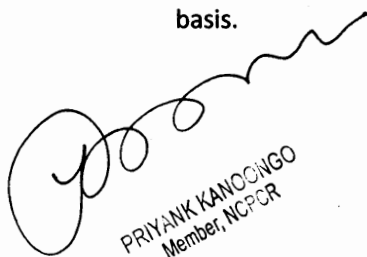
- vii. **Appropriate Strategies and enablers for re-engagement of children in conflict with law (CICL) and children in need of care and protection (CNCP) should be chalked out. State/UT wise situational analysis of the issue of (OoSC) and identification of the specific areas/ clusters viz. hilly terrains, streets, railway platforms, bus stations etc. where maximum out of school children are expected to be present. Specific initiatives should be taken to mainstream such children by provisioning relevant infrastructure facilities viz. hostels and schools etc. Focus on strategies for children with disabilities (CWDs), by which these children can be equipped for doing activities of daily living.**
- viii. **Convergence on issues of OoSC between various concerned Ministries and State departments viz. Women and Child Development, Human Resources Development, Tribal Welfare, Labour and Employment, Minority Affairs and Social Welfare is essential.** Committees should be set up from district level to State level for reviewing the status of Out of School Children. Inter-Ministerial and **Inter Departmental convergence meetings** should be held once in three months. State Commission for Protection of Child Rights should play major role in monitoring the implementation of State Plan of Action.
- ix. **These Committees should play a major role in re-engaging orphan children, children without guardians/parents, children at railway platform/ bus stand, street children, children addicted by substance abuse etc.** In convergence with school heads, AWW, ASHA, PRI, Local Urban Bodies, Central and State Social Welfare Boards, CWCs, DCPU, CCIs, Civil Society Volunteers. NCPCR will recommend proper guidelines for rehabilitation and re-engagement of such children after constitution of such committees.
- x. **Establishing of 'Learning Centres' for Out of School and Drop Out Children with effective Bridge Course and Life Skills Education are essential. Thereafter ensure enrolment into formal schools in age-appropriate classes work with the local communities to form Children Groups (CGs) and School Management Committees (SMCs) and work with them to ensure that they take accountability of the development of the children in their community and that even the most marginalized children in their area are sent to school and retained. DIETS should implement this under the supervision of NCERT and SCERT.**
- xi. **Teacher Training Colleges under regulation of NCTE colleges should cater for Out of School Children; teacher trainees should make case studies on Out of School Children as part of their syllabus. Their project work should include re-engaging of at-least one child compulsorily to school.** This drive can enable lakhs of children to


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- get re-engaged and enrolled/re-enrolled into schools. The whole procedure should be monitored by DIET at the district level, SCERT at the State level and NCERT and NCTE at the national level. Universities may be requested to incorporate these suggestions in their examination pattern.
- xii. Experiences have shown that **under-performing schools** improve more rapidly when they receive stronger **personalized guidance, capacity building and on-location support** from educational authorities and civil society organizations. Again the introductions of Life Skills Programme in schools have shown gain in quality education and retention of children in schools.
 - xiii. **State should notify in the Elective Rules of the Local Bodies and PRIs** that every candidate who wants to contest election should obtain a signed certificate from the school's principal that their ward/s are going to school.
 - xiv. For getting a job under the MNREGA Scheme, **it should be ensured that the child of the beneficiary of this scheme is enrolled in school and regular in attendance.**
 - xv. **Quarterly Workshop for Mothers of OoSC** should be held in order to enlist the direct support of the families should be done. SCERT should develop modules for such workshop and conduct these trainings on periodic intervals.
 - xvi. **Porta Cabins** for schooling of OoSC should be established in Naxal prone areas.
 - xvii. Each **migrant child should be provided a migration certificate** which should be produced by the child for getting admission in the new place of stay. Migration certificate should consist of DISE code of the school. While returning back to the home State/home district/permanent place of residence, such migrant child should carry this migration certificate from the state/place of migration. This data should be linked with UDISE. An MIS database should be maintained by the State Governments/ Education Departments/Boards. NCPCR and SCPCRs shall be responsible for monitoring and convergence between States.
 - xviii. **UDISE can be a platform for convergence for re-engaging OoSC through data sharing.**
 - xix. **A National Programme for prevention and Re-engagement on OoSC should be initiated by MHRD.** NCPCR can support in drafting of such a programme, should MHRD require such assistance.
 - xx. **Education of girls/children rescued from trafficking should be done in a convergent manner** with assistance from concerned Ministries with MHRD and Education Departments of the States.


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- xxi. Ministry of WCD, Government of India has provisioned **Crèche Scheme for Working Mothers**. This facility is primarily utilised and available for working mothers in urban areas. **It is recommended that similar facilities should be provided for rural women who work in fields and other occupations and women in urban slums/economically weaker segments of urban areas.** Children of such working mothers often drop out to take care of younger siblings and household chores. Anganwadi centres could also work as crèches to prevent OoSC.
- xxii. **Timely Financial fund flow for effective Tracking and Monitoring purposes should be sanctioned.** Adequate provision for funding by Ministry/Department should be made available for the purpose of combating the issue of Out of School Children.
- xxiii. It has been recommended by all the representatives of State Education Departments, NCERT/SCERT and State Commission for Protection of Child Rights that **the RTE Act, 2009 should be reviewed.**
- xxiv. **The States should come forward with exact number of OoSC within their States.** By assessing the exact figure of OoSC, constructive efforts can be made to re-engage them and mainstream back into schools. The fund allocation from MHRD for prevention and reengagement of OoSC should be proportionate to the number of children who are OoSC.
- xxv. OoSC population is a resource of this country which is getting wasted due to lack of education. These children could be a major talent pool of the country but shall remain a liability if they stay out of the mainstream education. Such children should be converted into assets by mainstreaming them into school education on priority basis.



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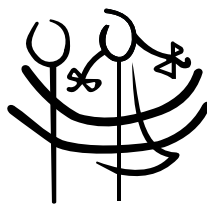
ANNEXURE XV

**Guidelines for
Eliminating Corporal Punishment
in Schools**





Guidelines for Eliminating Corporal Punishment in Schools



National Commission for Protection
of Child Rights (NCPCR)

Acknowledgements

The Commission acknowledges the support it received from the Ministry of Women and Child Development (MWCD) and the Ministry of Human Resource Development (MHRD), Government of India in carrying out its mandate in protecting children's rights.

Our thanks are due to the members of the Working Group set up by the Commission to formulate the 'Guidelines for Eliminating Corporal Punishment in Schools' under the chairpersonship of Ms Vimala Ramachandran. The Commission acknowledges the rich contribution of Henri Tiphagne, Executive Director, People's Watch, to these Guidelines.

Our grateful thanks, also, to Ms Gunjan Wadhwa (Consultant, NCPCR) and to all the colleagues in the Commission who have worked relentlessly on these Guidelines.

The prevalence of corporal punishment in schools and all other settings as a social norm goes on unquestioningly causing untold harm to children. We hope that these Guidelines are adopted by all States enabling elimination of corporal punishment in schools completely.

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- 1.1** Children are subject to corporal punishment in schools; institutions meant for care and protection of children such as hostels, orphanages, *asbram shalas*, and juvenile homes; and even in the family setting. A study ‘Child Abuse in India – 2007’, by the Ministry of Women and Child Development, Government of India, found that 69% of children reported having been physically abused. Of these 54.68% were boys. Incidents of having been abused in their family environment have been reported by 52.91% of boys and 47.09% of girls. Of the children who were abused in family situations, 88.6% were abused by their parents. Every two out of three school children reported facing corporal punishment. In juvenile justice institutions, 70.21% of children in conflict with the law and 52.86% of children in need of care and protection reported having been physically abused.
- 1.2** Documentary evidence points to the persistence of discrimination based on social, economic, linguistic and religious identities inside the school. Discrimination based on disability and illness/disease has also been reported.
- 1.3** It is also reported that psychological aggression (i.e., controlling or correcting behaviour that causes the child to experience psychological pain) is more pervasive than spanking and physical punishment.

- 2.1** Punishing children is regarded as normal and acceptable in all settings – whether in the family or in institutions. It is often considered necessary in order that children grow up to be competent and responsible individuals.
- 2.2** It is widely used by teachers and parents regardless of its evident lack of effectiveness, and potentially deleterious side-effects. Its very ineffectiveness tends to result in an escalation spiral which then leads to both a culture of rationalisation by those in authority and passive acceptance of the situation as evidence of ‘caring’ by children.
- 2.3** So pervasive is the justification of corporal punishment that a child may not think her/his rights have been infringed upon. Even if the punishment hurts, the child does not feel the importance of reporting the incident.
- 2.4** Therefore there are layers of beliefs and practices that cloak corporal punishment under the guise of love, care and protection, when it is actually an abuse of authority that harms the child. This follows from the belief that those in whose care children are entrusted in school or other institutions are ‘*in loco parentis*’ and will therefore always act in the interests of the child. This notion needs to be reviewed in the light of the widespread violence that exists in all institutions occupied by children.

Long-term Consequences of Corporal Punishment

- 3.1** It is now globally recognised that punishment in any form or kind in school comes in the way of the development of the full potential of children.
- 3.2** When adults use corporal punishment it teaches their children that hitting is an acceptable means of dealing with conflict. The more children are hit, the more is the anger they report as adults and consequently the more they hit their own children when they are parents, and the more likely they are to approve of hitting.
- 3.3** Corporal punishment leads to adverse physical, psychological and educational outcomes – including increased aggressive and destructive behaviour, increased disruptive behaviour in the classroom, vandalism, poor school achievement, poor attention span, increased drop-out rate, school avoidance and school phobia, low self-esteem, anxiety, somatic complaints, depression, suicide and retaliation against teachers – that emotionally scar the children for life.
- 3.4** Children subjected to punishment prefer aggressive conflict resolution strategies with peers and siblings and they do not consider it a violation of their rights.
- 3.5** There is an association between corporal punishment meted out to children and maladaptive behaviour patterns in later life, such as aggression and delinquency.
- 3.6** The effects of various forms of mental harassment or psychological maltreatment have shown that (a) combinations of verbal abuse and emotional neglect tend to produce the most powerfully negative outcomes; (b) psychological maltreatment is a better predictor of detrimental developmental outcomes for young children than the severity of physical injury experienced by them; (c) it is the indicator most related to behaviour problems for children and adolescents; and (d) psychological abuse is a stronger predictor of both depression and low self-esteem than physical abuse.
- 3.7** A chronic pattern of psychological maltreatment destroys a child's sense of self and personal safety.
- 3.8** Subtle and overt forms of discrimination are also known to have a negative effect on the emotional and intellectual health of children.
- 3.9** In recognition of the harmful consequences of corporal punishment on the child, the General Comment on corporal punishment stated that, "There is no ambiguity: 'all forms of physical or mental violence' does not leave room for any level of legalized violence against children. Corporal punishment and other cruel or degrading forms of punishment are forms of violence and States must take all appropriate legislative, administrative, social and educational measures to eliminate them." [CRC, General Comment 8, p.6]

Definition of Corporal Punishment

4.1 All forms of corporal punishment including sexual abuse are harmful to the child. Currently, there is no statutory definition of corporal punishment of children in Indian law. Definition of corporal punishment can at best only be indicative. In keeping with the provisions of the RTE Act, 2009, corporal punishment could be classified as physical punishment, mental harassment and discrimination.

4.2 Physical punishment is understood as any action that causes pain, hurt/injury and discomfort to a child, however light. Examples of physical punishment include but are not restricted to the following:

- 4.2.1 Causing physical harm to children by hitting, kicking, scratching, pinching, biting, pulling the hair, boxing ears, smacking, slapping, spanking or with any implement (cane, stick, shoe, chalk, dusters, belt, whip, giving electric shock etc.);
- 4.2.2 Making children assume an uncomfortable position (standing on bench, standing against the wall in a chair-like position, standing with schoolbag on head, holding ears through legs, kneeling etc.);
- 4.2.3 Forced ingestion of anything (for example: washing soap, mud, chalk, hot spices etc.);
- 4.2.4 Detention in the classroom, library, toilet or any closed space in the school.

4.3 Mental harassment is understood as any non-physical treatment that is detrimental to the academic and psychological well-being of a child. It includes but is not restricted to the following:

- 4.3.1 Sarcasm that hurts or lowers the child's dignity;
- 4.3.2 Calling names and scolding using humiliating adjectives, intimidation;
- 4.3.3 Using derogatory remarks for the child, including pinning of slogans;
- 4.3.4 Ridiculing the child with regard to her background or status or parental occupation or caste;
- 4.3.5 Ridiculing the child with regard to her health status or that of the family – especially HIV/AIDS and tuberculosis;
- 4.3.6 Belittling a child in the classroom due to his/her inability to meet the teacher's expectations of academic achievement;
- 4.3.7 Punishing or disciplining a child not recognising that most children who perform poorly in academics are actually children with special needs. Such children could have conditions like learning disability, attention deficit hyperactivity disorder, mild developmental delay etc.;
- 4.3.8 Using punitive measures to correct a child and even labelling him/her as difficult; such as a child with attention deficit hyperactivity disorder who may not only fare poorly in academics, but also pose a problem in management of classroom behaviours;
- 4.3.9 'Shaming' the child to motivate the child to improve his performance;

4.3.10 Ridiculing a child with developmental problems such as learning difficulty or a speech disorder, such as, stammering or speech articulation disorder.

4.4 Discrimination is understood as prejudiced views and behaviour towards any child because of her/his caste/gender, occupation or region and non-payment of fees or for being a student admitted under the 25% reservation to disadvantaged groups or weaker sections of society under the RTE, 2009. It can be latent; manifest; open or subtle. It includes but is not restricted to the following:

- 4.4.1 Bringing social attitudes and prejudices of the community into the school by using belittling remarks against a specific social group or gender or ability/disability;
- 4.4.2 Assigning different duties and seating in schools based on caste, community or gender prejudices (for example, cleaning of toilets assigned by caste; task of making tea assigned by gender); admission through 25% reserved seats under the RTE; or non-payment of any prescribed fees;
- 4.4.3 Commenting on academic ability based on caste or community prejudices;
- 4.4.4 Denying mid-day meal or library books or uniforms or sports facilities to a child or group of children based on caste, community, religion or gender;
- 4.4.5 Deliberate/wanton neglect.

4.5 The United Nations Committee on the Rights of the Child defines corporal punishment as follows:

The Committee defines “corporal” or “physical” punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, **however light**. Most involves hitting (“smacking”, “slapping”, “spanking”) children, with the hand or with an implement – a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices). **In the view of the Committee, corporal punishment is invariably degrading.** In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.¹ [*emphasis added*]

4.6 The Committee also notes that corporal punishment can be inflicted in many contexts:

Corporal punishment and other cruel or degrading forms of punishment of children take place in many settings, including within the home and family, in all forms of alternative care, schools and other educational institutions and justice systems – both as a sentence of the courts and as a punishment within penal and other institutions – in situations of child labour, and in the community.

This definition is a useful benchmark because it emphasises the various physical forms that corporal punishment might take, and establishes that this full spectrum of physical punishment – even acts that many consider ‘mild’ constitute corporal punishment. There is no threshold below which physical force against a child is acceptable.

5.1 International Law

- 5.1.1 Article 28(2) of UN CRC requires the State parties to “take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.”
- 5.1.2 Similarly, Article 29(1) (b) of the Convention emphasises that the “State parties agree that the education of the child shall be directed to the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations”.
- 5.1.3 Further, Article 37(a) of UN CRC requires States Parties to ensure that “no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment”.
- 5.1.4 This is complemented by Article 19(1) of the Convention, which requires States to–
 “Take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”
- Article 19(2) lays down that–
 “Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.”

5.2 Relevant Constitutional Provisions

- 5.2.1 Article 21 of the Constitution of India which protects the right to life and dignity includes the right to education for children up to 14 years of age². Corporal punishment amounts to abuse and militates against the freedom and dignity of a child. It also interferes with a child’s right to education because fear of corporal punishment makes children more likely to avoid school or to drop out altogether. Hence, corporal punishment is violative of the right to life with dignity.
- 5.2.2 Article 21A of the Constitution provides that “the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.” This fundamental right has been actualised with the enactment of Right of Children to Free and Compulsory Education Act, 2009.

- 5.2.3 Article 39(e) directs the State to work progressively to ensure that “... the tender age of children are not abused”.
- 5.2.4 Article 39(f) directs the State to work progressively to ensure that “children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.”

5.3 Indian Penal Code (IPC)

Several provisions of the Indian Penal Code (IPC) relating to varying degrees of physical harm and intimidation can be used to prosecute perpetrators of corporal punishment against children in an institutional setting. These include, *inter alia*:

- 5.3.1 Section 305: Abetment of suicide committed by a child;
- 5.3.2 Section 323: Voluntarily causing hurt;
- 5.3.3 Section 325: Voluntarily causing grievous hurt;
- 5.3.4 Section 326: Voluntarily causing hurt by dangerous weapons or means;
- 5.3.5 Section 352: Assault or use of criminal force otherwise than a grave provocation;
- 5.3.6 Section 354: Outraging the modesty of a woman;
- 5.3.7 Section 506: Criminal intimidation;
- 5.3.8 Section 509: Word, gesture or act intended to insult the modesty of a woman;
- 5.3.9 Till recently, the provisions of Sections 88 and 89 of the IPC were invoked to explain the power teachers exercised when inflicting corporal punishment. These two provisions in the chapter on ‘General Exceptions’ cover harms that may be caused without penal consequence. Section 88 exempts an act from being treated as an offence when the harm was caused “to any person for whose benefit it is done in good faith”. Section 89 exempts acts “done in good faith for the benefit of a person under 12 years of age ... by or by consent, either express or implied, of the guardian or other person having lawful charge of that person.” However, contrary to Sections 88 and 89 of the IPC, the Gujarat High Court in its judgement *Hasmukhbhai Gokaldas Shah v. State of Gujarat*, 17 November 2008, has clearly stated that “corporal punishment to child in present days ... is not recognised by law”. Further, India is a State Party to the Convention on the Rights of the Child. The standard of ‘the best interests of the child’ is now a part of domestic law. In 2006, the Committee on the Rights of the Child explained this obligation further when it reiterated, in General Comment No. 8, “the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”.
- 5.3.10 In theory, corporal punishment is covered by all the provisions under Indian law that punish perpetrators of physical harm. While these provisions make no distinction between adults and children, in practice, corporal punishment in schools and other institutions tends not to be prosecuted because it is widely accepted socially and regarded as legitimate. So the provisions highlighted in this section, the criminal provisions in particular, have the potential to be used in

5.4 RTE Act, 2009

5.4.1 The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which has come into force with effect from 1 April 2010, prohibits ‘physical punishment’ and ‘mental harassment’ under Section 17(1) and makes it a punishable offence under Section 17(2). These provisions read as follows:

17. Prohibition of physical punishment and mental harassment to child – (1) No child shall be subjected to physical punishment or mental harassment.

(2) Whoever contravenes the provisions of sub-section (1) shall be liable to disciplinary action under the service rules applicable to such person.

5.4.2 Sections 8 and 9 of the RTE Act place a duty on the appropriate Government and the local authority to “ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds”.

5.4.3 The RTE Act does not preclude the application of other legislation that relates to the violations of the rights of the child, for example, booking the offenses under the IPC and the SC and ST Prevention of Atrocities Act of 1989.

5.5 The Juvenile Justice (Care and Protection of Children) Act, 2000³

The Juvenile Justice (Care and Protection of Children) Act, 2000 is an important statute that criminalises acts that may cause a child mental or physical suffering.

5.5.1 Section 23 of the JJ Act, 2000 states as follows: “Whoever, having the actual charge of, or control over, a juvenile or the child, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.”

5.5.2 Section 23 covers the actions of anyone who has “actual charge or control over” a child. While Section 23 is likely to be applied most often to personnel in childcare institutions regulated by the JJ Act, it arguably applies to cruelty by anyone in a position of authority over a child, which would include parents, guardians, teachers and employers.

5.6 Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989

5.6.1 Some provisions of the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 can be used to prosecute an adult in the general category who inflicts corporal punishment upon a scheduled caste or scheduled tribe child.

5.7 Protection of Civil Rights Act, 1955

5.7.1 Various provisions of the Protection of Civil Rights Act, 1955 can be used to prosecute a person/ manager/trustee as well as warrant resumption or suspension of grants made by the Government

6.1 The National Commission for Protection of Child Rights (NCPCR) and the State Commissions for Protection of Child Rights (SCPCRs) have been entrusted with the task of monitoring children's right to education under Section 31 of the Right of Children to Free and Compulsory Education Act, 2009, which reads as follows:

31. *Monitoring of child's right to education* – (1) The National Commission for Protection of Child Rights constituted under Section 3, or, as the case may be, the State Commissions for Protection of Child Rights Act, 2005 (4 of 2006), shall, in addition to the functions assigned to them under the Act, also perform the following functions, namely:-
 - (a) examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation;
 - (b) inquire into complaints relating to child's right to free and compulsory education; and
 - (c) take necessary steps as provided under Sections 15 and 24 of the said Commissions for Protection of Child Rights Act.
- (2) The said Commissions shall, while enquiring into any matters relating to child's right to free and compulsory education under clause(c) of sub-section(1), have the same powers as assigned to them respectively under Sections 14 and 24 of the said Commissions for Protection of Child Rights Act.
- (3) Where the State Commission for Protection of Child Rights has not been constituted in a State, the appropriate Government may, for the purpose of performing the functions specified in clauses(a) to (c) of sub-section(1), constitute such authority, in such manner and subject to such terms and conditions, as may be prescribed.

6.2 As per Section 31.1 of the RTE Act the NCPCR and SCPCRs are supposed to:

- (i) Examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation;
- (ii) Inquire into complaints relating to child's right to free and compulsory education;
- (iii) Take necessary steps as provided under Sections 15 and 24 of the Commissions for Protection of Child Rights Act.

Under Section 32(3) and (4) of the RTE Act, the SCPCRs are the appellate authority to receive appeals from the aggrieved persons who would prefer such appeals when their grievances relating to children's right to education are not redressed by the designated local authorities under Section 32(2) .

Some Guidelines for Affirmative Action in Schools Towards Positive Development of Children

7.1 Addressing difficult situations in schools

- 7.1.1 Some behaviours of children are perceived by schools and teachers as problematic and the prevalent practice is to respond to them with punishment of varying degrees. Some such situations that arise in schools that invite punishment are:
- i. Not keeping to time and cleanliness regulations – e.g., late to school, not coming in uniform etc.;
 - ii. Academic related issues – e.g., incomplete home assignment, below expected academic performance, not taking a book to school, etc.;
 - iii. Not meeting classroom expectations of school authorities – e.g., inattentive, talking in class, making noise in class, etc.;
 - iv. Troublesome behaviour – e.g., disturbing other children in class, lying, stealing etc.;
 - v. Offensive behaviour, causing hurt or injury to others – e.g., bullying, aggression towards peers, stealing (violating rights of others), vandalising, etc.
- 7.1.2 Situations (i) to (iii) should be within the scope of the concerned teacher to ‘handle’.
- 7.1.3 For situations (iv) and (v) the school should have a clear protocol to guide teachers about which situation needs assessment and intervention by a school counsellor and which one needs immediate intimation to higher authorities at school and the parents. If an attempt at resolving the problem is not satisfactory, parents could then be referred to a specialist (a child and adolescent psychiatrist or a counsellor).
- 7.1.4 The child and adolescent psychiatrist or counsellor should help children learn behaviours that help them develop a sense of self-discipline that leads to positive self-esteem. The school counsellor should have the skills to build trust. He/she should have constant interaction with the child, his/her parents and teachers for understanding the difficulties of the child. The parents should be taken into confidence before sending a child to the counsellor. The school counsellor should be allowed to hold workshops with the students in different classes from time to time without the presence of teacher and staff. Besides having in-house counsellors, the students and their parents should have the liberty to approach reputed counsellors/mental health professionals to be empanelled by school. The school should also invite reputed mental health professionals to hold workshops for its students and teachers.

7.2 Guidelines for positive engagement with children

- 7.2.1 Punishment is often justified as a 'last' resort in extreme situations for instance – bullying, causing physical harm, destruction of property, vandalism, sexual harassment, infringement of rules such as playing truant, carrying objects which are against school rules into the classroom, provocative/challenging behaviours etc. However, two children with the same problems may come from different backgrounds – one an indulgent family, which believes that a little exuberance is all right, and another where the family is also at its wits' end. The contexts in which a child's behaviour takes place and how it comes to notice, lend themselves to child/classroom/school management.
- 7.2.2 A protocol of response based on first versus repeated problems founded on a set of rules the school develops with children's inputs would go a long way to democratise response dispositions. To this, an added component of preventive interventions, such as life-skills programme, increases overall effectiveness.
- 7.2.3 A difficult situation can also be resolved by a process of triangulation between the student/family, the teacher/school administration and a student council. A more difficult situation then may not be so much a discipline issue but a psychological one that needs professional attention and care.
- 7.2.4 The following guidelines are based on therapeutic strategies based in turn on the principles discussed above that are commonly employed by mental health professionals in clinical settings for families with children with behaviour disorders. Though simple, these are effective strategies when implemented consistently:
- i. Arriving at a consensus with children about expected behaviour and consequences;
 - ii. Framing rules and guidelines in consensus with children;
 - iii. Focusing on every child's positives and appreciating good behaviour;
 - iv. Using different strategies to encourage and promote positive behaviours;
 - v. Never comparing one child's performance with another;
 - vi. Setting limits and developing clarity on boundaries;
 - vii. Providing children an opportunity to explain before any other response;
 - viii. Giving a warning or chance before any response;
 - ix. Actively listening, remaining calm and ensuring the safety of other children while handling troublesome or offensive behaviour;
 - x. Addressing perceived 'severe or problematic behaviour' through consultation with parents, child and counsellor/psychiatrist;
 - xi. Discussing (with children) and adopting time-out strategy as the last resort with children.

Positive engagement with children

Some examples

- (i) Pay positive attention
 - ◆ Notice children being good and appreciate them verbally
 - ◆ Focus on the positives of every child, even the most difficult ones
 - ◆ Identify good efforts even if ultimately unsuccessful
 - ◆ Never compare performance with that of other children but refer to the child's own previous attempt
 - ◆ Use motivational award chart (for younger children) or points or additional marks for good behaviour
 - ◆ Award children for demonstrating values such as responsibility, honesty, caring, etc.
 - ◆ Be accommodating of children who require additional time and input, while providing additional tasks to children who finish work earlier
- (ii) Ignore minor incidents or lapses
 - ◆ This is the best strategy; the situation may aggravate in the short-term but it disappears later
- (iii) Set clear limits
 - ◆ Explain clearly the classroom behaviour expectations that the children have framed together
 - ◆ Use 'I need you to ...' rather than 'You need to ...' statements
 - ◆ Give clear commands on what is expected, e.g., 'stay quiet' instead of 'be good'
 - ◆ Avoid 'Don't' commands
 - ◆ Enable children to set clear limits for themselves
 - ◆ Use a 'firm and calm' manner – avoid an angry tone
- (iv) If behaviour continues, take away privileges in consultation with the children (negative reinforcement – this encourages the child to follow good behaviour to keep his privilege, therefore it is not considered punishment)
 - ◆ Do not give star/point/mark on his chart for the day or give negative point/marks
 - ◆ Take away 15 minutes of any privilege time (child and teacher mutually agree) for recurrent misbehaviours
 - ◆ Discuss the consequences well ahead with children so that there is consensus regarding plan of action when a particular behaviour occurs
 - ◆ The negative reinforcement should be appropriate and fair
 - ◆ It should be consistently employed

7.3 Recognise that the child needs help and not punishment

- 7.3.1 Children's temperament interacts with multiple environmental factors such as parenting style; disciplinary patterns at home and school; stress such as marital disharmony, domestic violence, etc. Many children are not ready or prepared for the demands of the school in terms of academics, social and interpersonal relationships. It is therefore important to try and understand what could be causing the behaviour as underlying emotional problems often result in disruptive behaviour in children. It is also necessary to provide opportunities for children from different backgrounds to learn psychosocial skills. When adults view problem behaviours of a child as a product of interaction of various psycho-social and biological factors it helps to understand that the child needs help rather than punishment.

7.4 Rights and enablement of the teaching community

- 7.4.1 Preventive strategies should take priority while planning interventions to improve the teacher-student relationship and create a child-friendly environment in schools. While addressing corporal punishment, mental harassment and discrimination it is also essential to provide guidelines and assistance to school systems and empower them with alternative effective strategies to handle difficult situations, and provide children with a good learning experience. To this end, regular/periodic workshops are essential for teachers to share their experiences and learn from each other and from experts who could help them manage difficult situations. However, ending corporal punishment should be seen as an immediate obligation, with clear sanctions for non-compliance, and separated from the inevitably much longer process of transforming schools to rights-respecting institutions.
- 7.4.2 The school should maintain the student-teacher ratio at the level as prescribed under the RTE Act, 2009, in order to avoid overcrowding and unmanageable class, leading to the practice of corporal punishment.

7.5 Rights and enablement of children in school

- 7.5.1 A child's participation in a democratic fashion to enable a collective decision should provide a better end-result rather than arbitrary, random, unpredictable decisions that are imposed on a child. There is a shift of focus onto enablement and engagement processes, to ensure prevention and protection.
- 7.5.2 Guidelines should be framed in consensus with children and can be adopted by school systems. Involving the children in the processes of framing the regulations gives an opportunity for them to discuss their concerns, view the problems from different perspectives and generate a sense of commitment to follow the regulations rather than impose the regulations upon them.

7.6 Need for multi-disciplinary intervention

- 7.6.1 There is a need for multi-disciplinary inputs and networking as no sector of child abuse can be treated as independent of other sectors. Psychologists, educationists, school teachers, parents, social workers, lawyers and children should be involved so as to improve their understanding and thereby increase their cooperation and participation towards the well-being and participation of the child.

7.7 Positive engagement – Life-skills education

- 7.7.1 Life-skills education should be an essential part of school curriculum.
- 7.7.2 Life-skills education should be used as a mode of healing. It helps children to improve their communication and interpersonal skills, builds empathy, decision-making and critical-thinking skills, coping as well as self-management skills. The interplay between the skills produces powerful behavioural outcomes, especially where this approach is supported by other strategies such as media policies and health services.
- 7.7.3 Life-skills education should address issues of self-esteem, aggression, drug abuse, lack of praxis in academic engagement, lack of engagement in education, decision-making, problem-solving, coping with emotions, coping with stress, communication skills – negotiation/refusal skills, interpersonal skills, creative thinking, critical thinking, self-awareness skills – including awareness of rights, influences, values, attitudes, strengths and weaknesses.
- 7.7.4 Appropriately implemented life-skills education should lead to improvements that have long-term effects on the behaviour of children.
- 7.7.5 Experiential methodologies such as theatre, narratives, storytelling and artwork helps children learn better. It helps all children participate in and contribute equally to the production of knowledge, which is a continuous dialogue. The objective of the process is to liberate participants from both internal and external oppression, so as to make them capable of changing their reality, their lives, and the society they live in.

Practical examples of positive engagement

Empathy building

A simple story could be used to help children understand the meaning of empathy. Children can be asked to think if the characters acted responsibly. Children could then be asked if they have ever been in a situation where they could understand exactly how the other person felt, because they have had similar experiences. During the process children are helped to learn that empathy is to understand how the other person feels and that empathising makes a person treat others in a kind and respectful manner.

Social problem-solving skills

Children often engage in maladaptive behaviours such as lying, stealing or aggression because of their inability to generate alternative solutions to the problems they have in hand.

For example, when a child is faced with teasing by his classmates, the only solution he generates could be being aggressive with them. Or in another situation a child decides to forge his score-sheet for fear that

his parents might punish him. Though in both these situations the child's concern is genuine, the solution he/she chooses only worsens the situation for him/her. It is therefore important for teachers to help the children understand that such solutions are temporary and actually compound the problem, rather than solving it. In the process of story-telling children are helped to focus on long-term consequences rather than on immediate consequences and it assists them in generating a set of solutions which would be more appropriate in such situations. Children should also be encouraged to take assistance from a trusted adult when they are unable to decide.

Coping with emotions and stress

One common issue of concern for teachers of secondary and higher secondary classes is children who have difficulty controlling their anger. Most of the time the child's anger has a genuine reason and therefore while addressing anger management, it is important to acknowledge the reason for anger and explain that anger *per se* is not the problem. Children often agree that verbal or physical aggression which results from anger is not acceptable and are willing to take help when offered. It is critical to assist children to become aware of their emotions and handle them before they escalate. Simple techniques such as: STOP and leave, drink water, count numbers, take deep breaths or even punch a pillow/punch bag in the playroom, could be suggested. Once the child is calm, problem-solving techniques could be employed.

Another important source of stress for children and teachers is examinations. As the focus is most often on the outcome, i.e. the grades and marks, children often are not appreciated for the efforts. This results in immense anxiety when children face exams, as they are worried about performance and outcome. It is therefore important for teachers to appreciate children and help them focus more on the process of preparation than the outcome. It would help students if a teacher facilitates a discussion on exam-related stress well ahead of exams.

These are some of the techniques that have been discussed from a mental-health perspective to give teachers a conceptual framework and empower them with some practical tips to follow and execute rules and regulations. As school systems play an important role in the development of children it is important to bring about a balance between positive engagement and managing children with difficult behaviours through positive disciplining.

7.8 Role of school management/administration

- 7.8.1 All staff associated with the school should be subject to these guidelines.
- 7.8.2 All staff should ensure that all children enjoy their rights as per the RTE Act.
- 7.8.3 All forms of interaction with children and amongst children should be geared towards ensuring this objective. All staff should ensure that the child is treated in a manner that encourages him or her to stay in school and learn to his or her potential.
- 7.8.4 To achieve the aims of RTE it should be recognised that teachers are **not** *in loco parentis*. In other words teachers should not take on the role of parent.
- 7.8.5 No physical punishment of any kind should be permitted.
- 7.8.6 No mental harassment of any kind should be permitted. No form of discrimination based on

- 7.8.7 Any instance of corporal punishment, mental harassment or discrimination should be dealt with in a time-bound manner in such a way that implications for the child are minimised.
- 7.8.8 It should be the responsibility of all staff to create an environment free of all forms of fear, trauma, prejudice and discrimination.
- 7.8.9 The treatment of the child in the school should be such that the child feels included and secure. Counselling services for children should be made available.

7.9 Guidelines for creating an environment conducive to learning as well as enablement for the same

- 7.9.1 All children should be informed through campaigns and publicity drives that they have a right to speak against physical punishments, mental harassment and discrimination and bring it to the notice of the authorities. They should be given confidence to make complaints and not accept punishment as a 'normal' activity of the school.
- 7.9.2 The conduct of the teacher and administration should be such that it fosters a spirit of inclusion, care and nurturing.
- 7.9.3 All school management and educational administration authorities should run regular training programmes to enable teachers and educational administrators to understand and appreciate the rights of children and the spirit of the Right to Education. This is essential to make a shift to a rights-based approach to education and abolish physical punishment, mental harassment and discrimination.
- 7.9.4 The teachers should be trained in the skills required to positively engage with children who are different in order to understand their predicaments.
- 7.9.5 All teachers working in any school – government run, aided or private – should provide a written undertaking to the management of the school and to the concerned district authority of the department of the government to which the schools normally report that they would not engage in any action that could be construed legally as amounting to 'physical punishment, mental harassment and discrimination'.
- 7.9.6 All schools should conduct an annual social audit of physical punishment, mental harassment and discrimination. This should be made public and accessible to the authorities, the parents and to civil society. This audit should be concluded before the end of the academic year and be made public before the commencement of the new academic year.
- 7.9.7 The school management/administration should instruct every school headmaster/head teacher to hold a general body meeting with all parents of the school as well as the school management committees (SMCs) under the RTE, the school education committees or parent-teacher associations (where the SMCs are not functional) on the NCPDR guidelines and the procedures to be adopted for protecting children and their rights in schools.
- 7.9.8 An environment free of corporal punishment should be stipulated as one of the conditions for giving recognition/no-objection certificate (NOC) to a school by the State Government under the new RTE and also as one of the conditions for giving affiliation to a school by the State Board. Similarly, 'practice

of Corporal Punishment' should be stipulated as one of the conditions for withdrawal of recognition/ NOC given to any school by the State Government and also for affiliation given to a school by the State Board. The State should frame appropriate rules and regulations concerning the recognition/ NOC in relation to the above. The rules should be reviewed by the State Government and necessary amendments to this effect should be notified in a time-bound manner.

Indicative guidelines that should be adopted in different situations

Some of the strategies that should be employed based on the level i.e., severity and frequency of problem behaviours are discussed below:

- i. *Levels 1–2*: Not keeping to time and cleanliness regulations and academic related issues
 - ◆ Give the child an opportunity to explain
 - ◆ Give opportunities for student to find solutions for the problem when he/she doesn't meet expectations
 - ◆ Give a warning and a chance before taking any further action
 - ◆ When the frequency is more, involve family members who could supervise the student
 - ◆ With adolescents, work through the frustration about not achieving the goal and how to achieve it the next time
- ii. *Level 3*: Not meeting classroom expectations of school authorities, e.g. inattentive, talking in class, making noise in class, etc.
 - ◆ Set limits (in a clear tone without being angry) for mutually agreed behaviour in class
 - ◆ Strategies like seating in front to limit distractions, frequent one-to-one attention (every third task), buddy support (seating with another child who is of low risk for such behaviour), etc. should help younger children
 - ◆ Try managing a problem with minimal disruption to other children
 - ◆ A simple verbal warning e.g. just calling out the name of the child who is talking in the class or asking him/her question could help
 - ◆ With older children, humour could be used to get across the point
 - ◆ Use a time-out chair if behaviour continues, **only if it has been discussed** and agreed to by the children
 - ◆ Check for underlying causes such as learning difficulties, attention deficit and hyperactivity, difficult home environment, trauma
 - ◆ Consult the school counsellor/PT master to provide attention enhancing tasks/games
 - ◆ Discuss the problem with parents, the efforts made and give them the choice of consultation
- iii. *Levels 4–5*: Troublesome behaviour, causing hurt or injury to others:
 - ◆ Not only teachers, but children also should have an idea of other children's right. When children violate the rights of others:
 - ◆ Give the child an opportunity to explain his/her behaviour without threatening
 - ◆ Set clear limits and discuss the possible consequences of such behaviour
 - ◆ Have a plan for dealing with violence that is also discussed with students

contd. ...

- ◆ If the student regrets his action have the student visualise appropriate response to provocation (other than aggression)
- ◆ Clarify if the behaviour is recent or longstanding
- ◆ Look for learning difficulty, underlying emotional disturbance/family situation that are contributing to the problem or conduct disorder or refer to school counsellor for the same
- ◆ For behaviour such as engaging in fighting/lying, when occasional , give assignments on writing down possible consequences of such behaviour, writing alternative solutions (with assistance from parents), and possible ways of dealing with anger-provoking situations
- ◆ Involve parents early; explain what was tried at school and how this is affecting child's academic and social development and overall success. Prepare the parents before suggesting consultation with a specialist for guidance as to how the problem behaviour could be tackled by school authorities
- ◆ When the issue is serious or acute – such as, unprovoked aggression, vandalising, disrupting the school routine – explain to the parents the need for immediate consultation with a child and adolescent psychiatrist to prevent harm to the child and other children
- ◆ For truancy, have parents notify school when student leaves the house in the morning; check if child is avoiding any test/class due to learning disability or fear
- ◆ Identify where school may contact the student if the student does not show up on time

Handling difficult circumstances

- i. Dealing with verbally confrontational students
 - ◆ Do not lose your temper, raise your voice, or use sarcasm
 - ◆ Try to actively listen and allow the child to calm down, call the child later when he/she is calm to debrief
 - ◆ Avoid involving other students
 - ◆ If things escalate, call for additional assistance from administration
 - ◆ Meet the parents—Though some may not be receptive it is still important
 - ◆ Address anger management issues
- ii. Dealing with children who can get physically aggressive in class
 - ◆ Remain as calm as possible
 - ◆ Call for assistance by another adult
 - ◆ Have a student designated to get help from another teacher
 - ◆ The safety of the other students is important, send the other students from the room if it appears they could get hurt
- iii. Handling disclosures

School systems also need to be empowered to handle disclosure/detection in an appropriate way. When the child confides about being abused to the teacher, either in the school context or otherwise, it is important that the teacher:

contd. ...

- ♦ Is open and supportive of the child
- ♦ Does not undermine or doubt the child's information
- ♦ Does not blame the child and assures him/her of confidentiality
- ♦ Explains to the child that necessary help needs to be taken to prevent further abuse in future

7.10 Guidelines for mechanisms and processes to give children a voice and engage in the process of creating a positive environment – agency of children

- 7.10.1 A mechanism for children to express their grievances both in person and anonymously should be provided. Drop boxes for complaints should be placed in the school and a mechanism should be developed to address the same. Anonymity of the children/parents should be maintained while sharing the details of the complaints/grievances with other agencies such as the media in order to protect their privacy/confidentiality.
- 7.10.2 It is the responsibility of the school management to enable the formation of 'class *bal sabba*' so that children of all ages can positively engage with democratic processes.
- 7.10.3 Among its various functions the student council should also decide on a set of codes and rules that does not violate the rights of children and the right to education
- 7.10.4 Clear-cut protocols should be framed by the schools for redressing the grievances of the students and/or parents.
- 7.10.5 The School Management Committee should constitute a Corporal Punishment Monitoring Cell (CPMC) in each school to look into cases of corporal punishment. This committee should consist of two teachers, two parents (elected by the parents), one doctor (where available), one lawyer nominated by the District Legal Services Authority, one independent counsellor, an independent child rights or woman rights activist of the local area (nominated by the District Child Protection Society from a panel recommended by the local *Tehsildar*/BDO) and two students who are also duly elected from a class which is not the highest class in the case of high school and higher secondary school. The purpose is to ensure that students who are facing high school finals or public examinations are not drawn into this process. For example, in a school having classes up to 5 it can be 2 students from Class 5; in a school which has classes up to 8 it can be 2 students from Class 8. However, in a school having classes up to Class 10, it has to be 2 students from Class 9 and not Class 10; and in a school having classes up to Class 12, it has to be a student from Class 11.

7.10.6 The role of the CPMC should be:

- i. To hear the grievances of corporal punishment, child sexual abuse, mental harassment and discrimination without any delay whatsoever and preferably on the day of the occurrence; it should be noted that any delay can result in the evidence being tutored in favour of any one and especially in a case of violence against children when children continue to remain in the custody of the school/teachers' community, they are susceptible to the influence of the school management/teachers. To ensure that no student/parent/teacher/staff is harassed for the complaints that have been preferred;
- ii. To ensure that students are not forced/influenced by the school authorities to testify in their favour before media/police/court of law or any other authority;
- iii. To see as to whether adequate steps have been taken to prevent corporal punishment, child sexual abuse, mental harassment and discrimination;
- iv. To ensure that whenever such occurrences take place in a school the 'victim child' is always protected and provided, under the supervision of this committee, the best possible speedy care – medical and psychological – and the required treatment for the trauma that the child has suffered;
- v. The recommendations of the CPMC should be forwarded to the district level authority for such matters with a copy to the Taluk/District Legal Services Authority within 48 hours of the occurrence for appropriate action.
- vi. It is important to distinguish between primary redressal (meaning, the adjudication of the CPMC is accepted by the child and his/her family) and secondary redressal (where the child and family are not happy with the CPMC and the matter may have to be referred to the district level authority for action).
- vii. Even in cases where the parents of the child are satisfied that no legal action needs to be followed, the matter should be inquired into by the CPMC.
- viii. When the issues are not sorted out at the school level, recourse should be taken to the procedures outlined under Clause 8 of these guidelines.

Accountability and Multi-sectoral Responsibility

- 8.1** The ‘right to remedy’ includes providing (a) equal and effective access to justice; (b) adequate, effective and prompt reparation for the harm suffered; (c) access to relevant information concerning violations and reparation mechanisms. Effective reparation should include restitution, compensation, rehabilitation, satisfaction and guarantee of non-repetition. It is pertinent therefore that the State Governments which have to ensure their State rules provide for better implementation of the RTE, 2009, make suitable legal provisions for ‘effective reparation’ in cases of corporal punishment.
- 8.2** All educational institutions including schools and hostels, government as well as private, are custodians of children during the time the children are on their premises. It is thus the responsibility of the management/administration of the school/institution to ensure that children are safe from all forms of violence, including corporal punishment. Therefore, along with the school teacher, warden or the staff of the school/institution that has inflicted violence on the child, the management/administration of the school/institution and their respective education administrators/managements at the higher levels should also be held responsible.
- 8.3** In every case of violence against children the respective management/administration should conduct an independent investigation, thus taking responsibility for what goes on in school/institution and not rely simply on enquiries conducted by the school/institution. In any case of child abuse, if the parent withdraws the case, the designated authority should take cognisance of the offence and proceed without harming the child and taking strict action against the accused.
- 8.4** As required under Section 32(1) of the RTE Act, State Governments and UT Administrations should designate appropriate ‘local authority’ and notify the same to all concerned for the purpose of redressing the grievances relating to corporal punishment and discrimination. Such ‘local authority’ should be a member of the District Child Protection Society (DCPS) which exists under the Integrated Child Protection Scheme (ICPS) and is headed by the District Collector/Magistrate/Deputy Commissioner. The DCPS should function as the District Level Committee for the purpose of corporal punishment under the Chairpersonship of the District Collector/Magistrate/Deputy Commissioner and the concerned Sub-divisional Magistrate (SDM) should be its *ex officio* Member Secretary/Convener. The District Collector/Magistrate/Deputy Commissioner should receive the complaints of physical punishment, mental harassment and discrimination in schools and get these redressed within a reasonable timeframe. It should also be his responsibility to take *suo motu* cognisance of grave cases of corporal punishment and to take remedial measures as per law expeditiously.
- 8.5** Immediately upon being informed about the occurrence of a case of corporal punishment, it should be the duty of the SDM concerned to immediately ensure that the CPMC undertakes a preliminary fact-

- 8.6** In a matter where a child while in school suffers from corporal punishment, resulting in death (homicide or suicide), sexual abuse or serious/grievous mental or physical injury, the SDM concerned should rush to the school as soon as he comes to know about the incident and get the preliminary enquiry organised immediately under his direct supervision. He should ensure that the preliminary enquiry is completed within 7-10 days.
- 8.7** In cases of suicide/sexual harassment/hospitalisation resulting due to the action of a teacher/staff of the school, the accused should be suspended immediately until the investigations by the SDM and police are over.
- 8.8** As soon as the preliminary enquiry report of the CPMC is made available to the designated SDM, he/she should independently assess the report and verify the facts, wherever he/she has doubt. If he/she is convinced that a *prima facie* case exists then, speedily and without any delay whatsoever prefer a complaint in writing to the local police station at the earliest but not later than one month from the date of the incident, asking them to set the process of law in motion.
- 8.9** In all complaints of corporal punishment preferred by the concerned SDM, it should be the duty of the Station House Officer/Police Station in-Charge to immediately register it as First Information Report (FIR) and forward a copy of the same to the concerned SDM, CPMC and the school management and the parents/guardian of the affected child forthwith. He should ensure that all relevant penal provisions are reflected in the FIR, including that of IPC, the Juvenile Justice (Care and Protection of Children) Act, 2000 and corresponding Rules, the Protection of Civil Rights Act 1955, and the SC/ST (Prevention of Atrocities) Act, 1989 and corresponding Rules.
- 8.10** Thereafter, the case should be entrusted to the Child Welfare Officer (CWO) of the local police station to take it to logical conclusion from the police side. He should immediately proceed in apprehending the accused in cognisable offences and complete his/her investigation within a reasonable timeframe. He should file the charge-sheet in the court of the concerned magistrate with a copy of the same being endorsed to the concerned SDM within a reasonable timeframe but preferably within 3 months from the date of registration of FIR. He/she should ensure that, irrespective of the gravity of the alleged offence(s), no child/teacher/staff/parent witness from the school or the neighbourhood who has sufficient knowledge of the incident are examined in the police station for the purpose of investigation. His interaction with the children in the school or neighbourhood should be in a non-intimidating manner and should be in the presence of their parents and the legal aid member of the concerned CPMC.
- 8.11** It should be the responsibility of the legal-aid member of the CPMC from the District Legal Aid Services Authority (nominated by its Member Secretary) to provide free and effective legal aid from beginning to end to a child victim of corporal punishment and his parents connected thereto, wherever parents are not able to engage a lawyer on their own.

- 8.12** The SDM and CWO should always take special care to ensure that the head of the school or the school management or teachers' associations/unions, directly or indirectly, do not attempt to tamper with the witnesses in any manner whatsoever.
- 8.13** The concerned CPMC and SDM should ensure that priority is accorded in the entire process to the victim child and her/his safety and both physical and mental health. Hence, if the child needs to be rushed to a hospital they may take care to do so without any delay, or if the services of a professional psychiatrist or psychologist or child counsellor are required, these should be arranged at Government expense in the case of government schools. For all aided or private schools the local educational authority should organise the same at the expense of the private management.
- 8.14** Once the enquiry by the SDM is complete, he should recommend through the Collector to the State Government for paying adequate compensation to the child victim or his family in light of the gravity of the case within a definite timeframe. The same may be recovered by the government from the school in due course.
- 8.15** The SDM concerned should also send a copy of his enquiry report to the Director (School Education) with his recommendation for disciplinary action against the teacher/principal/non-teaching staff of the school concerned (wherever applicable). In cases, where the report of the SDM reveals that there is a clear case made out against the teacher/head/staff, proper disciplinary action as per law/rules should be initiated by the Director (School Education) and appropriate actions should be taken within a reasonable timeframe.
- 8.16** The Director (School Education) should also take into account the record of the school concerned regarding corporal punishment, while renewing its recognition and/or giving NOC to it to open a new branch.
- 8.17** For having timely assistance, the District Level Committee on Corporal Punishment under the Chairpersonship of the District Collector/Magistrate/Deputy Commissioner should maintain (in updated manner) a list of required professionals, such as doctors, counsellors, psychologists, criminal lawyers, child rights/women rights activists (sub-district wise). Orientation programmes for such empanelled professionals on the issues relating to corporal punishment should be organised from time to time by the District Level Committee. The School Education Department should make a provision in its budget and place the same at the disposal of the District Magistrate for the purpose of paying honorarium to them on a case-to-case basis, as well as for meeting the training/orientation/sensitisation/publicity/public awareness programme expenses.
- 8.18** The SDMs should keep the District Collectors/Magistrates (as the Chairperson of the District Level Committee on Corporal Punishment) informed about the developments in the cases of corporal punishment within their jurisdiction once in 3 months in the format that should be prescribed by the Directorate of School Education or the District Magistrate.

- 8.19** The District Collectors/Magistrates should periodically, but at least once in 3 months, hold the meeting of the District Level Committee on corporal punishment to assess the situation of corporal punishment in the District so as to take remedial measures.
- 8.20** It should be made the responsibility of the Director (School Education) of the State Governments/ UT Administrations as the State Level Nodal Officer to ensure that the above guidelines are widely known to all concerned and implemented in letter and spirit.
- 8.21** All the School Education Boards, including ICSE, CBSE and State Boards should take *suo motu* cognisance of the incidents of corporal punishment in the schools affiliated to them and to get the same inquired into within a reasonable timeframe. The School Boards should maintain a multi-disciplinary panel of professionals (State-wise) for the purpose of independent enquiry. They should constitute a Grievance Redressal Cell to receive complaints of corporal punishment and to take appropriate actions in such matters expeditiously. These Cells should also work out strategies for preventing such incidents in schools affiliated to them. One such strategy should be to ask the affiliated schools to organise sensitisation/ orientation programmes for teachers on corporal punishment issues from time to time. These Cells should also suitably advise the said Boards in addressing the issue from a larger perspective.
- 8.22** The School Boards should issue Guidelines to the schools affiliated to them, stipulating that '*corporal punishment-free environment*' would be one of the conditions for granting affiliation/recognition/NOC to them. Similarly, they should also stipulate that 'practice of physical punishment/mental harassment' would be one of the grounds for withdrawal of affiliation/recognition/NOC granted to them.
- 8.23** The School Boards should also issue instructions immediately to all schools affiliated to them to abide by the provisions of the Right of Children to Free and Compulsory Education (RTE) Act, 2009 as well as the Rules and Guidelines framed/issued/notified thereunder. They should have a test check in this regard once in a year. The Department of School Education and Literacy in the Ministry of Human Resource Development (MHRD) should get the compliance level in this regard evaluated through NUEPA once in a year and the findings should be shared with NCPCR.

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ELIMINATING CORPORAL PUNISHMENT IN SCHOOLS**

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