



**Report**  
**Education Division**

Two-days National Consultation for Chairpersons & Members of State Commissions for  
Protection of Child Rights  
organized by  
National Commission for Protection of Child Rights  
27-28 May, 2017  
Chintan Bhawan, Gangtok, Sikkim

National Commission for Protection of Child Rights (NCPCR)  
New Delhi

## **Background**

The Education Division of National Commission for Protection of Child Rights (NCPCR) has been taking several initiatives to ensure that children enjoy their rights to education as enshrined in the Constitution of India and other legislations. The Commission, while exercising the mandate given under Right to Education Act, 2009 as well as redressing other educational matters has observed that there is a need for more collaborative and concerted effort for ensuring that the educational rights are enjoyed by all children. Education is a subject in the concurrent list and is administered by the Ministry of Human Resource Development at the Centre and Education Departments at the State level, however, there are various other sectors that play a key role through different inter-linked schemes/interventions in ensuring education to all children. Therefore, multi-sectoral convergent action is the need of the time for ensuring quality education to all children and to reach out to the last child.

As per Commissions for Protection of Child Rights (CPCR) Act, 2005, NCPCR is mandated to monitor laws related to rights of the child, review policies and procedure of the governments and give recommendations for their effective implementation. Specifically, section 13 (1) (f) of the CPCR Act 2005 embeds the Commission to 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. Hence, the National Commission for Protection of Child Rights plays a key role in ensuring that the rights of the child are upheld.

Therefore, NCPCR has been taking initiatives in creating platform for all the State Commissions engaged in the protection of rights of the child, where they can share their experiences and best practices. Keeping in view issues of Child Rights especially in North East States, a two-day National Consultation for Chairpersons and Members of State Commissions for Protection of Child Rights (SCPCRs) was organized on May 27-28, 2017 at Chintan Bhawan, Gangtok, Sikkim.

A separate session was dedicated to Right to Education presided over by Shri Priyank Kanoongo, Member (Education). The main themes on education of children discussed in the workshop were:

### **93<sup>rd</sup> Amendment Act, 2005**

The Right of Children to Free and Compulsory Education Act, 2009 implemented since April 1, 2010 came as a concrete step towards realizing the goal of free and universal education for all children in the age group of 6-14 years. The Act contains 39 sections spread over eight parts including all aspects of school education that fulfills the goal of education for all in an equitable and just education system. The fundamental principle behind the landmark legislation was to provide an inclusive elementary education system that will create a humane society. Specifically, section 12 (1) (c) of the Act qualifies as the most significant legal and social endeavor to promote inclusion and eliminate inequality in education by addressing the deep-rooted socio-economic disparities that exist in the country. It can be seen as an extension of the spirit of National

Education Policy of 1968 and 1986. Also, in *Social Jurist vs Government of National Capital Territory of Delhi & Ors* (CW No 3156 of 2002), the Delhi High Court ordered the Delhi government to ensure that private schools provide 25% reservation to children belonging to economically weaker sections in lieu of the land concessions received by the schools from the government. The section provides for opportunity for admission of children from disadvantaged and weaker sections in private unaided schools by making it mandatory for specified category schools and private unaided schools to reserve 25% of their seats for such children at the entry level. This came as a welcome step as it places a legal duty on the above stated schools to fulfill children's right to education in a manner that is decided by the government.

However, the provision was not welcomed by the private unaided schools that had until then benefitted from an unrestricted right to grant admissions. The validity of Section 12(1) (c) was challenged and in 2012's *Society for Unaided Private Schools of Rajasthan vs Union of India*, the Court viewed that the RTE Act is constitutionally valid and it would apply to all government schools, aided schools (including minority aided), specified category schools and unaided non-minority schools. It would not apply to unaided minority schools because the Act, particularly Sections 12(1)(c) was held to infringe the fundamental freedom guaranteed to unaided minority schools under Article 30 (1) (6) of the Constitution. It was highlighted during the discussions that the matter was further referred to a constitution bench of the Supreme Court, in the *Pramati Educational and Cultural Trust and Ors v. Union of India and Ors* AIR 2014 SC 2014 which held that if the RTE Act, 2009 is made applicable to minority schools, aided or unaided, the right of the minorities under Article 30(1) of the Constitution will be abrogated. Thus, the RTE Act shall not apply to minority schools. Further, section 1(4) states that subject to the provisions of the Articles 29 and 30 of the Constitution the provisions of this Act shall apply to conferment of rights on children to free and compulsory education. Section 1 (5) of the RTE Act, inserted through 2012 amendment states that nothing contained in the Act shall apply to madarasas, vedic pathshalas and education institutions primarily imparting religious education.

The rationale behind the exemption to minority educational institutions was to provide equal opportunity to the minorities to conserve their language, script and culture. Another legislation, Article 15(5), introduced through the 93<sup>rd</sup> Constitution Amendment Act, 2005, aimed to enable the State to make special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in matters of admission of students belonging to these categories in unaided educational institutions including private educational institutions, whether aided or unaided by the State. However, the minority educational institutions referred to in clause (1) of article 30 are exempted from the above amendment. However, while pursuing their role u/s 31 and 32 of the RTE Act, 2009, the National Commission and State Commissions for Protection of Child Rights have observed that the real objective of benefitting children of minority communities by immunizing the minority institutions under Article 15 (5) is not being fulfilled. It was also observed that there are some schools run by management of minority education societies that provide formal education as per section 29 of the RTE Act but they are not providing religious education as per section 1 (5) of RTE Act. Also,

these schools are immunized through 93<sup>rd</sup> Amendment Act, 2005. Such practices adulterate the spiritual and cultural aim of minority institutions and dilute the fundamental objective of Article 30 of the Constitution.

For this, a resolution was passed by the Heads and Members of SCPCRs and NCPCR that *there is a need to assess and review the Act to find out how this Act has actually helped the children of minority communities. Further, these institutions are means for upliftment of minority communities and still there is a need to devise a pathway to ensure that the benefits of such institutions reach the children of minority communities.*

### **Review Meetings with State Departments**

NCPCR while exercising the mandates provided under Section 31 of the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act, 2009) to examine and review the safeguards for rights provided under the Act and recommend measures for their effective implementation realized that Education may be the subject administered by the Education Department. However, there are various other sectors that play a key role in ensuring the educational and other rights of the children. There is a need to bring in convergence and collaboration amongst Education and other child development programmes to identify gaps, avoid overlapping, prevent duplication of effort for effective implementation. Therefore, the Commission is organizing multi-sectoral review meetings with the States. So far, 9 multi-sectoral review meetings have been conducted with the States. These review meetings were attended by the departments like; School Education, Women & Child Development, Tribal Affairs, Social Justice, Department of Labour, Department of Minority Affairs, Department of Panchayati Raj.

### **National Report on Safe & Secure School Environment in India**

An initiative to prepare an Annual Status report to identify the critical gaps and to address the gaps in extending a safe learning environment for children in schools. In light of NCPCR's monitoring role under section 31 of the RTE Act, the division has initiated the process of bringing up National Annual Report on Safe and Secure School Environment in India; an annual, comprehensive report that will provide a reliable and comprehensive data producing useful recommendations for all stakeholders especially the facilitators. Specifically, the report intends to *first*, not only assess the magnitude of the problem but also identify the underlying responsible factors. This will be useful for monitoring progress and will provide assessment and analysis to facilitate policymaking. *Second*, it aims to highlight the variations in the input indicators such as availability of schools, infrastructural facilities, quality of schooling etc. *Third*, the report aims to bring-out children and those at risk to the barriers that they faced in attending schools and to recommend more targeted measures. The orientation workshop has been completed in eight States and Tripura, Chhattisgarh, Andaman & Nicobar Islands have completed the data collection.

### **Amendment in Plantations Labour Act, 1951**

The Plantations Labour Act, 1951 is a specific Act for people engaged in tea plantations. The Act provides that well-being of the children of plantation workers is the responsibility of the Tea Estate

owners. However, this Act contradicts the provisions and definitions of the RTE Act, 2009. Therefore, it is high time to amend the Act in view of the RTE Act and harmonize all child related Acts.

### **Outcome**

Based on the discussions on the above themes, a Charter of Recommendations was passed by 80 participants including Chairpersons and Members from 19 SCPCRs and NCPCR. The Charter included following proposals for recommendations:

1. Review of status of benefits being availed by children of minority communities with reference to Article 15 (5) and Article 21 A of the Constitution of India
2. Amendment of the Plantations Labour Act, 1951
3. Full implementation of Juvenile Justice Act, 2015 and POCSO Act, 2012 in all States/UTs

\*\*\*\*\*