

NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS
NEW DELHI

WINTER INTERNSHIP REPORT

UNDER THE SUPERVISION and GUIDANCE

OF

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NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS

INTRODUCTION

Children are sensitive and need to be cared for and protected from the society's harmful element. Though constitutional and statutory safeguard are available for to the children in the society, their rights are still being violated. Accordingly the need was felt for some laws for the protection of child rights in India. The Protection of Child Rights Act, 2005 paved way for the establishment of National Commission of Protection of Child Rights. The Commission has been addressing complaints of child rights violations, examing and reviewing the safeguards provided by or under any law for the protection of child rights and recommending measures for their effective implementation.

Violation of child rights can occur from any form of abuse including physical, sexual and mental abuse, deployment of children in child labour, abandonment of children, kidnapping and trafficking of children and corporal punishment in schools and colleges. Such cases of violation presented in written or oral form are referred to the Commission in the form of complaints. In order to redress to the complainant about child right violation, the NCPCR developed a complaint handling system known as Complaint Management System (CMS).

The NCPCR lays emphasis on child rights and equal protection of all children in the age group of 0-18 years. Under Section 13(1) (j) of CPCR Act, the commission is mandated to enquire into complaints in relation to deprivation and violation of child rights. Violation of the right of a child encompasses physical, sexual and mental abuse in any form, kidnapping and trafficking in children, displaced and missing children, child labour and corporal punishment etc. Cases of violations are represented in oral or written forms are referred to the commission in the form of complaints. The complaints received at NCPCR begins with registering the complaint, determining the ground of admissibility, proposing the course of action, contacting the authorities, following up the complaint and then the action taken leading to case closure. Time to time reminders is sent by the NCPCR to the concerned authorities in order to know the exact position of the complaint which has been filed at NCPCR. Each and everything is recorded by the commission.

The commission works on the following issues:

- Child Labour
- Corporal Punishment
- Child Sexual Abuse
- Juvenile Justice
- Child Health and Nutrition
- Foeticide and Infanticide
- Child Participation
- Kidnapping
- Right to Education
- Protection of Child Rights and Role of local bodies etc etc.

EXPERIENCE

I, Swapnil Srivastava of Damodaram Sanjivayya National Law University, Visakhapatnam has interned under the supervision of The Director, Mr. Anupam Mishra and as an Intern I was ask to go through various cases and files related to the child rights violations and later analyse them. Various States and District was covered in these files and cases, different district have different problem. According to the Census the population of Indian is 1, 210, 193, 422¹ out of which Uttar Pradesh has a population of 207, 644, 568². Uttar Pradesh covers 17% of the India's Population and it is surprising that more than 50% of the cases are from the State of Uttar Pradesh. The most of the cases where related to Child Labour, Corporal Punishment, Juvenile Justice, Child Sexual Abuse, Child Kidnapping which has a serious concern in today's scenario. In my opinion children are to be considered a priority when it comes to planning, investment and development. The challenges and neglect faced by the children should be of paramount concern to the State. The State should ensure that it is able to reach and protect and ensure that the implementation of this agenda in a specified manner.

While I was going through the file, I found that there were no cases related to the small and innocent children begging on the streets and railway station. It is said that the children are the

¹ <http://www.populationofindia.info/> last visited on 14th January, 2014 at 20:38.

² <http://www.indiaonlinepages.com/population/india-current-population.html> last visited on 14th January, 2014 at 20:36.

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future of the country, but I believe that if this is the present then what kind of future we can expect from the present. This is one of the cases which is left unheard and left unattended by the Commission. When I brought this thing to the notice of the Director Sir, he was also surprised and asked me to file a complaint regarding the same. Under his supervision and guidance, I conducted a survey and clicked few photographs of the children selling flowers, pen etc and begging on the streets and at the Metro Stations, and filed a complaint in the Commission and requested the Commission to take a strict action against the same. While I was conducting the survey I found that the children are being forced by their parents to beg and sell the things on the roadside and at the railway station, and if they do not get sufficient money to home they are beaten up by their parents. This is one of the biggest child rights violations that we see and notice everyday while we are moving on the road or travelling. Even Juvenile Justice Act also provides Shelter for the children in need of care and protection, but unfortunately nothing is being done in this regard. The Commission promised to take an action the same as soon as possible.

The Commission organized a National Convention on the Progress of Right to Education Act in collaboration with UNICEF on the 14th and 15th of January of which I was also a part of the Convention. There were many topics discussed in the Convention and many recommendations were also made regarding the progress and proper functioning of the education system. There were various dignitaries and other resource person who put forward their view points at the Convention. There are 11% schools where there is only one teacher.³ According to the survey it was found that there should be two teachers for 60 students and three teachers for 90 students. Moreover, there should be teacher for every class and a Head master to monitor the work. Many problems were discussed in the Convention related to the management and other issues. The rights of Children with disability have been discussed in the Convention which came out to be very fruitful to me. There were people from the School Management Committees (SMCs), Panchayats, and School Teachers who put their view points for recommendations and other problems which they face in their area. The Convention came to a success and lot of points have been covered and no area was left unheard in the Programme. Each agenda was covered in the Convention and I got to learn a lot from it.

³ National Convention on the Progress of Right to Education Act held on 14th January, 2014 at Ashoka Hotel, Delhi.

As an intern I got to learn a lot during my internship period, I was asked to go through the various Acts and Statutes and analyse the cases and complaint in the Commission. I got the opportunity to interact with other persons in the Commission and learnt a lot from them also. They told me about the Commission works and how the Commission deals with the cases in a specified period of time. I came to know that how important are the Child Rights in the society.

RECOMMENDATIONS FOR RIGHT TO EDUCATION

- The school education system should be strengthened.
- It should be the duty of the State to monitor the functioning of the school in their area and monitor admission and completion of elementary education of every child.
- Proper infrastructure should be maintained keeping in mind the disabled children.
- The other entitlement should be provided to each and every children and it should be duty and responsibility of the concerned authority to keep a strict check on the same and keep a record of it.
- The Right to Education has to look into the special needs of children for their welfare.
- The Basic Learning Ability of a Child should be a focus in each and every school.
- The Pupil Teacher Ratio (PTR) should be maintained and should be checked from time to time basis.
- There should be no discrimination between any children.
- RTE should play a maximum emphasis in quality and learning outcomes and process.
- There is a need for timeline in which the teachers are required to complete their curriculum within that specified period of time.
- There is a need for much more attention on the infrastructure of the schools where there should be separate toilets for boys and girls.
- The personality development of child should be of essence in the society as they are our future.
- The States should be encouraged for community based programmes.

JUVENILE JUSTICE SYSTEM

The word Juvenile has been defined under *Section 2(k)* of *The Juvenile Justice (Care and Protection of Children) Act, 2000* as, “a person who has not completed the age of eighteen”.⁴

In principle, India has one of the most advanced juvenile justice systems in the world with a strong child centric focus and clear separation between adult and child jurisdictions. *Section 2(l)* includes treating juveniles in conflict with the law with respect and focusing on their rehabilitation. It also includes the development of a family restoration based care plan in a non-legalistic setting for children in need for care and protection.

While going through the files I found that in many States, the procedural institution that have been made compulsory by the Juvenile Justice (Care and Protection of Children) Act, 2000, such as the Juvenile Justice Board, the Special Juvenile Aid Police Units and the Child Welfare Committees are not in place or fall short of performing in a manner that reflect the spirit behind the Juvenile Justice Act to maintain the rights of the children. Custodial institutions such as Observation Homes and Children’s Homes are unable to maintain and meet the basic standards of care and protection. Among these institutions some have become the violators of the child rights. Children landed up worse off than when they entered the Juvenile Justice System, with abuse and lack of access to basic amenities of health and education, they are being forced to work in the custodial institutions.

CHILDREN IN JUVENILE JUSTICE SYSTEM

There were various complaints received by the Commission on the different aspects of the implementation of the Juvenile Justice Act, pointed to the need to closely observe at the functioning of the juvenile justice system and implementation of the Juvenile Justice Act, i.e., the whole process of meeting out justice to children in conflict with the law, the gaps in disposal of cases before the Juvenile Justice Board and Child Welfare Committees and the neglect of custodial care and rehabilitation of children within the juvenile justice framework.

There was a complaint in the NCPCR from the State of Uttar Pradesh; District Meerut, in which there was exploitation being done in the Juvenile Justice Observation Homes. In the

⁴ Bare Act

Observation Home people were supplying drugs to the juvenile, which is an offence under Section 25 of the Juvenile Justice (Care and Protection of Children) Act, 2000,⁵ which punishes the person with the imprisonment of three years and will also be liable for fine. It was observed that these Observation Homes were not maintained properly and there was lot of hygiene problem. There were juveniles who were ill and no medical care was provided to them. Rule 45 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 provides the provision for proper medical care to be given to the juveniles in the institutions. Despite of this the juveniles are being asked to work and cook the food inside the Juvenile Homes. It was found that there were some Juveniles missing from the juvenile home, and there was no such complaint or record for the same. There were children who were of the age of 22-24 years who were still in the juvenile homes which causes lot of problem to the children as these people use to harass them and use to beat them. Such people should be immediately removed from the juvenile and observation homes and these homes should be properly maintained and surprise inspections should be conducted from time to time in order to make the things fall in place.

Moreover the children picked up from the railway station are generally booked under Railways Protection Act and instead of the Juvenile Justice Act and sent directly to the Observation Homes and produced before the CWC. There are no Transit Homes for the rescued children. The poor condition of the Observation Homes has negative impact on the children.

RECOMMENDATIONS BY ME

- The Juvenile Justice Act in the district needs to be reviewed and implemented.
- The regular meeting of the Child Welfare Committee (CWC) should be conducted and there should be a capacity building for the members of CWC.
- There should be a provision of Children’s Homes for Girls and Boys and a Home for Children with Special Needs.
- There should be proper establishment of these Homes and time to time check should be made in these Homes.
- Surprise visit should be made by the concerned authorities in the Juvenile Justice Homes and other Institutions.

⁵ Bare Act

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- A strict and systematic record of the children in the Observation Homes should be maintained and surprise inspection should be made in order to keep the things in place.

CORPORAL PUNISHMENT

The prevalence of corporal punishment in schools has been recognized by the Government of India. It reveals that the corporal punishment has been inflicted upon 70% of the school going children amounts to two out of every three children. There have been many reports of violence on children in schools, hostels, special homes, observation homes etc. Schools and institutions which are considered to set standard and should be setting an example for giving care to children have let down children instead of creating a good atmosphere and other things without fear. Many children have suffered insults and humiliation and have become resigned to their fate has harmed their psyche and damaging their self-esteem. There are of many children who have dropped out of school due to their inability to cope with their insults. All these institutions are integral part of society that is yet to take firm stands in favour of the children rights.

The Commission received many complaints from children and their parents and also took up cases *suo moto*. NCPCR also issued guidelines to the State Government and other authorities, to define Corporal Punishment and other action points for preventing it. There was huge debate in the newspapers and also in the electronic media. This has given confidence to several children to make complaints at school level to the NCPCR. A number of State Government has also responded to the guidelines. NCPCR believes that corporal punishment is a moral and social problem. There has been action taken by the State Government in order to ban corporal punishment. There is Child Helpline Number (1098) which works for 365 days, the person can call on till number and can lodge a complaint regarding child rights issues and then an immediate action is taken.

The Right of Children to Free and Compulsory Education (RTE) Act, 2009⁶, 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). The Section read as follows:

⁶ Bare Act

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.

There have been many cases related to corporal punishment in which the teachers punishes the children by not letting them eat their lunch in the classroom and detain the children after schools, beat them with scale and other objects such as dusters etc. The punishment which is given by the teachers is much more heinous than the mischief done by the small innocent kids.

RECOMMENDATIONS BY ME

- The institution should be held responsible for the welfare of the children enrolled with them. In the case of injury, assault or death the institution should be held responsible for the same.
- The institution management should pay the compensation in the event of death or injury of the child as a result of the consequences of the punishment given in school.
- In case of violence against children, the Education Department has to conduct a parallel investigation and strict action should be taken against the same.
- Time to time Parent Teacher Meeting should be conducted so that the parents should be aware of what their children are doing in the school.
- Occasionally, survey should be conducted and a record should be kept for future references in order to maintain the strictness in the school.
- A stern action should be taken against the teacher who has misused her/her power.
- There should be a strict law on Corporal Punishment.
- To undertake in depth review of the existing positive practice of getting a feedback from the school management, from children regarding punishment in schools and their efficiency.

CHILD TRAFFICKING and KIDNAPPING

Child Trafficking and Child Kidnapping is one of the common things in today’s time. Daily in newspaper we see that this particular child is missing and this child was sold etc.

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One such complaint from Amroma was lodged in NCPCR, in which there was nurse who use to sell the baby boy/girl to the buyer at a particular price level. It was found that not only the nurse is involved but also the maid and other people are also involved at different stages. The people involved in this take their commission and then sell the baby to the other person. It was requested by the NCPCR to the State Government to take some action against the same:

- ✓ To inform the Commission about the measures taken by the State Government.
- ✓ To get the FIR registered against the accused.
- ✓ To provide Action Taken Report (ATR) which may include the full facts and circumstances of the case.
- ✓ Proper safeguard should be put in place by the hospital administration against trafficking.
- ✓ Stipulating the responsibilities of the concerned functionaries of health and ICDS department.
- ✓ Protocol should be put in place and police should be trained thoroughly.
- ✓ The Hospital may use posters as a medium for spreading awareness among the patients.

This operation was spread over a period of one year. After thorough investigation it was found that the nurse uses to take babies home and later deliver them to the buyer. Various Sections of IPC was imposed such as Section 120(B) r/w Section 363, Section 383, 467, 471, 417 etc. It was further found that the FIR forced was extremely weak from the angle of the prosecution. It was observed that the police have abysmally failed to perform accurately. There was a total lack of will and adequate understanding of the role. There have been cases of Child Kidnapping and it has been observed that these kidnap generally takes place by the known person who are residing in that colony who give greed of something or the other and takes them away from their parents.

RECOMMENDATIONS BY ME

- Supervision and monitoring needs to be strengthened and not just left to the written record because the records cannot throw light on the observation in the behaviour of the staff and other persons.
- People who are involved in the immunisation process may be involved in the parents facing difficulty with the child identification.

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- A linked system has to be developed and put in place to guide and support the vulnerable parents and children.
 - Hospitals may use posters as a medium of spreading awareness among the patients.
 - IEC material and information leaflet maybe developed in the local language and made available with the hospital and district administration including the Panchayats.
 - This poster and IEC material may be made legally mandatory for all institution just it is made under the PNDDT Act.
 - Involve larger community in the process of protection of children.
 - Make full throttle efforts to end trafficking of babies and children in the name of adoption.

The overall attitude of the district, medical and police administration is apathetic. There is a complete lack of will across the district. The issue still requires further probe leading to preventive and corrective actions.

It was found that during the year 2011, 168 children were missing in the city are of Agra district, out of which 119 children came back home and 49 are yet to be recovered. According to the newspaper report 53305 children are found to be missing every year. In which Jharkhand, Chattisgarh, Andhra Pradesh, Bihar, Odisha and Uttar Pradesh are topping the list. In the year 2010-11, 4203 children were missing from the State of Uttar Pradesh. It has been found that the children who are kidnapped, the person who are kidnapping them kidnap then just for the money. This need to be overcome by keeping a strict record on the children and the police should be trained strictly and their jurisdiction should be made clear.

CHILD LABOUR

Childhood is the most innocent phase in human life. It is that stage of life when the human foundations are laid for a successful adult life. Many children, instead of spending it in a carefree and fun-loving manner while learning and playing, are scarred and tormented. They hate their childhood and would do anything to get out of the dungeons of being children and controlled and tortured by others. They would love to break-free from this world, but continue to be where they are, not out of choice, but force. This is the story of child labour.

Innocent children are employed by industries and individuals who put them to work under gruelling circumstances. They are made to work for long hours in dangerous factory units and sometimes made to carry load even heavier than their own body weight. The children are at times made to starve and are given worn out clothes to wear. The two primary reasons for the ever-growing social malice of child labour are poverty and lack of education. Poor parents give birth to children thinking them as money-making machines. They carry infants to earn more on the streets from begging. Then as they grow they make them beggars, and eventually sell them to employers. This malady is rampant across the length and breadth of India.

Child labour is any kind of work children are made to do that harms or exploits them physically, mentally, morally, or by preventing access to education. Child labour coupled with child abuse has today become one of the greatest maladies that have spread across the world. Each year statistics show increasing numbers of child abuse, more so in the case of the girl child. When a girl is probably abused by someone at home, to hide this fact she is sold to an employer from a city as domestic help, or then as a bride to an old man. India accounts for the second highest number of child labour after Africa. Bonded child labour or slave labour is one of the worst types of labour for children. This system still continues in spite of the Indian Parliament enacting the *Bonded Labour System (Abolition) Act, 1976*. It is estimated that approximately 10 million bonded children labourers are working as domestic servants in India. Beyond this there are almost 55 million bonded child labourers hired across various other industries.

A recent ILO report says that about 80 per cent of child labourers in India are employed in the agriculture sector. Generally, the children are sold to the rich moneylenders to whom borrowed money cannot be returned. 'Street children' is another type of child labour where children work on the streets as beggars, flower sellers, etc, instead of going to school. Sometimes they are made to go hungry for days together so that people feel sorry for them and give alms.

There have been many cases in NCPCR relating to child labour and child bondage labour and Commission has taken certain steps to overcome this problem from the society. It was found that children are generally given greed for something or the other and then taken away and later forced to work somewhere or are ask to beg on the streets and railways stations. There was a complaint in NCPCR, that, there was child who was working in a shop where by mistake some oil spill by him and then the shopkeeper threw acid on him. The boy was

rushed to the hospital where his condition was critical. The shopkeeper was booked under Section 164 of the Code of Criminal Procedure. Later the boy denied that he was not working anywhere and it was his fault. Sometimes these innocent children tell lie under some pressure and threat on them. There are many more cases and complaints regarding the same.

The major causes of child labour are: Over Population, Illiteracy Rate, Poverty, Urbanization, Orphans children, Unemployed Elders etc.

RECOMMENDATIONS BY ME

- Since poverty is one of the cause of child labour the government has to generate employment in the society.
- There should be a greater cooperation between the various departments dealing with children and strengthening of the CWCs.
- The people should be made aware of the Government plans and schemes.
- There should be total ban on the employment of children upto the age of 14 years, be it a hazardous or non-hazardous industries.
- There shall be no forced labour even for children between the age of 14 years to 18 years; and whenever a child above the age of 14 years is forced to work, it should be treated as an offence under Section 374 IPC and it is to be dealt with sternly.
- Measures need to be taken not only to stop this crime against children, but also to slowly, steadily and surely provide every child a well-deserved healthy and normal childhood.

CHILD SEXUAL ABUSE

A child has been defined under Section 2(d) of The Protection of Children from Sexual Offences Act, 2012 as; any person below the age of eighteen years is a child. Further the term Sexual Assault/Abuse has been defined under Section 7 of The Protection of Children from Sexual Offences Act, 2012. Daily in the newspaper and on television we see news related to child rape, child sexual abuse. It is really very shocking that the small children becoming the victims of these heinous crimes daily. It has been found that 98.28% of 581 cases registered in 2007 the accused were known to the victim and had been interacting with the victim. Again there are many complaints which have been registered in the NCPCR to take the

appropriate action against the same. Not only the girls but also the boys are becoming the victim of sexual abuse in the society. It has been found that generally after the sexual abuse the girl and their parents keep quiet and do not lodge any complaint regarding the same as they have the fear that they will be defamed in the society and the society will not allow them to live there. As a result of which most of the accused run away and they have a chance to do the same act again. Though there are strict laws in the society, still the people don't have a threat of committing a crime. Moreover, the girls are blackmailed for something or the other and they are asked to keep quiet. There have been cases where the police and the media disclose the name of the victim, but the Juvenile Justice Act, Section 21 prohibits the publication of name of a child in need of care and protection.

The minor girl also becomes the victim of sexual abuse with the various Ministers. There was a recent case in Banda district of Uttar Pradesh where a girl was raped by a minister and the girl was kept in jail where it wasn't her fault and the minister was out of the jail. The Minister accused the girl of theft. There was a thorough investigation it was found that not only did the minister raped her but also his cohorts. Since the girl was a minor she was sent to jail instead of Juvenile Justice Homes. It was further found that the girl went voluntarily to the ministers' place and thus, the provision of Bonded Labour Act should be incorporated.

RECOMMENDATIONS BY ME

- The proper treatment should be given to the victim.
- The victim should be awarded compensation and other medical expenses and if possible the victim should be taken to the rehabilitation centres.
- Provide a support to assist the child during the investigation and trial of the case with the consent of the child or with the consent of the child's parents or guardian in whom the child has the trust upon.
- The police and other concerned authorities should be more alert, especially in the area where most of these crimes are committed and then take action according to the situation.
- The victim should not be asked and harassed with the question being asked during investigation as the victim is already in such a trauma and over it, the victim is asked again and again about the same incident.

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- A record of the cases should be kept upto date and later should be revaluated by the higher authorities.
 - The matters should be disposed off as soon as possible and the victim should also get timely justice from it.
 - The victim should be provided with the psycho-social support and safe place.
 - Such children are in need of care and protection thus, the provision of Juvenile Justice Act should be followed.

CONCLUSION

As far as the children are concerned, it must be emphasised that the children cannot be duty bearers of their rights, as adult it should be our responsibility. We need to provide an environment for protection of child rights, empathise with their state of deprivation and demonstration concern for their well being, institution meant for the children need to be incorporated as integral element of the society. According to me there is a lot to be done, it must be recognized that there has been a distinct shift in the approach of the Indian Government in its willingness to address child protection. The shift is reflected in the expansion of ICDS, there has been a increase in the budgetary allocation of *Sarva Siksha Abhiyan* , that is playing a huge role in generating a demand for education. Further the Commission deals with various other complaints such as Unlawful detention where the police detain the children and torture them and purposely accuse them for something or the other. The other complaints are where children die out of hunger and starve for many days just because they have nothing to eat. The persons should be made aware about the various schemes with are run by the Government so that no child or person die out of hunger. There are many children, who are left hungry, and there are many organizations working on the same and to save the child death due to hunger and it has been made possible to a great extent. It has been observed by me that half of the complaints/cases are not closed and no further action has been taken by the Commission even after all the evidence and other relevant documents which are produced before the Commission. I believe that timely justice should be given to person within a specified period of time. According to me this may be the reason that most of people don't file complaint/cases because they knew that it will take years to get justice and compensation. This thing should be overcome by making the justice system a bit faster.

The perspective that protection of child rights should inform the design of all the policies and programmes has recently begun. In fact, it must be acknowledged that there has been incorporation of children crèches and day care centres are there under the policy and schemes. The ultimate goal of NCPCR is to reach the last child of the society and provide access to millions of youth volunteers working to uphold the child rights. It is against the backdrop that of the positive initiatives by the government that the NCPCR will continue to ensure the universality of rights and justice for children is grounded in practical, day to day realities and that the distinctive rights of rights of children become a matter of practice and

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not mere policy. For the NCPCR, rights are not abstract concepts but are firm commitments to create conditions, through which freedoms are steadfastly protected for children in their daily lives.