



National Commission for Protection of Child Rights *vis-à-vis* Child Custody matters

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Under the Indian Law, the ‘welfare of the child’ is given more importance than considering the whims and fancies of the parents. The parent who can provide the child with better financial support and most fit for the good upbringing of the child will be given judicial custody. This reduces the probability of predicting as to which parent might most likely have child custody.

National Commission for Protection of Child Rights (hereinafter referred to as ‘NCPCR’) is a statutory body constituted under Section 3 of the Commission for Protection of Child Rights Act, 2005. NCPCR emphasises the principle of universality and inviolability of child rights and recognises the tone of urgency in all the child related policies of the country. For the Commission, protection of all children in the 0 to 18 years age group is of equal importance. Thus, policies define priority actions for the most vulnerable children. This includes focus on regions that are backward or on communities or children under certain circumstances, and so on.

Who is a ‘Child’

According to international law, a ‘child’ means every human being below the age of 18 years. This is a universally accepted definition of a child and comes from the United Nations Convention on the Rights of the Child (UNCRC), an international legal instrument accepted and ratified by most countries. As per United Nations Convention on the Rights of the Child (UNCRC), every person below the age of 18 years, is accepted as ‘child’ and the same has been adopted by the Indian laws. As per laws related to children in India, every person below the age of 18 years is falls under the definition of child and every such child in need of care and protection or in conflict with law, is entitled to receive protection from the State.

Custody of the Child

For the Commission, every right the child enjoys is seen as mutually-reinforcing and interdependent. Therefore the issue of gradation of rights does not arise. A child enjoying all his/her rights at her 18th year is dependent on the access to all his/her entitlements from the time he/she is born. Thus policies interventions assume significance at all stages, however in the matters of marital discords among the spouse in a marriage, the Commission does not have the power to decide over the issue as to whom the custody of the child is to be granted. Cases pertaining to marital discord which are in litigation before courts are beyond ambit of Commission’s power to pass any sort of direction.

In cases where the custody of child is disputed, irrespective of the matter being in litigation before the court of law or otherwise, National Commission for Protection of Child Rights do not decide or direct over issues related to custody of child.

Judicial Interpretation:

a) **Geetanjali Dogra vs State & Ors.**

Delhi High Court has held that Child Welfare Committee has no jurisdiction to settle custody dispute between the parties and if, matrimonial disputes are pending in the Family Court, it is the Family Court which has jurisdiction to settle such dispute. The Court further observed, “It is apparent thus that in terms of provisions of the Guardians and Wards Act, 1890 powers are conferred on the Court of competent jurisdiction to decide the aspects of guardianship, visitation and access to a minor child and as observed elsewhere hereinabove, in the circumstances of the instant case where there is litigation pending between the parties i.e. the petitioner and the respondent no.2 before the Family Courts, Delhi, the respondent no.2 could not have resorted to a mode to detract from the adjudication qua the rights of access to the minor child, which are to be made by a Court of law.”

b) **Priya Yadav vs. State of Madhya Pradesh (W.P. No. 6163/2016)**

The Hon’ble High Court of while dealing with the issue of child custody held that in a case where due to dispute between the husband and wife, proceedings are pending between them, the CWC has no jurisdiction to direct visiting rights either to husband or wife. Under the provisions of Guardian and Wards Act and the Family Court Act, the powers are conferred to the court of competent jurisdiction to decide the application in respect of visiting or welfare of the child.

In light of the above, it is aptly clear that the Commission does not have the power to decide over the issues related to custody of the child in cases of marital discord, etc. as it falls under the sole jurisdiction of the competent court.
