Chapter XI

NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS

The National Commission for Protection of Child Rights (NCPCR) was set up in March 2007 under the Commission for Protection of Child Rights Act, 2005, an Act of Parliament (December 2005). The Commission's Mandate¹ is 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. The child is defined as a person in the 0 to 18 years age group.

The Act provides not only for the constitution of a National Commission but also for the establishment of State Commissions. It again provides for in the preamble the intent to establish Children’s Courts also for providing speedy trial of offences against children of violation of child rights. The establishment of Commissions was persuaded by:

1. the Declaration on Survival, Protection and Development of Children adopted by the UN General Assembly in 1990;

2. the acceding of 1992 by India to the Convention on the Rights of the Child;

3. the National Charter for Children,2003;

4. the special session of UN General Assembly which adopted an outcome document titled “A World Fit for Children”.

¹ http://www.ncpcr.gov.in/about_ncpcr.htm visited on 27-07-2010
The Commission visualises a rights-based perspective flowing into national policies and programmes\(^2\), along with nuanced responses at the State, District and Block levels, taking care of specificities and strengths of each region. In order to touch every child, it seeks a deeper penetration to communities\(^3\) and households and expects that the ground experiences inform the support the field receives from all the authorities at the higher level. Thus the Commission sees an indispensable role for the State in sound institution-building processes, respect for decentralization at the level of the local bodies, at the community level and larger societal concern for children and their well-being.

Under the Commissions for Protection of Child Rights Act, 2005, the National Commission would have all the powers of the Civil Court while inquiring into matter under the CPC\(^4\). The National Commission while inquiring into matters could seek for the discovery and production of any document and receive evidence on affidavits. It could also requisition any public record or copy thereof from any court or office. Apart from having the power to forward a case to a Magistrate, the commission is also authorised to issue commissions for the examination of witness.

After inquiry the National Commission can recommend initiation of proceedings for prosecution or any other action the commission may deem fit. It can approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary or recommend to the concerned authority for grant of such interim relief to the victim's family as the Commission may consider necessary\(^5\).

\(^2\) See Chapters II-IX for detailed discussions in this regard

\(^3\) It is within the community that the rights of the child be protected, rather the community should recognize the protection of the rights of children as its responsibility. See for a detailed discussion, Alan B. Morrison(ed.), *Fundamentals of American Law*, Oxford University Press, 1996 at pp.403-406. The role of the Commission thus shall not limited in examining the reported violations, but would extend to making the community aware and getting them participated in protective measures.

\(^4\) Section 14, The commission for protection of child rights Act, 2005

\(^5\) This itself shows, the powers of the Commission is very much weakened and is equivalent to a body which can just stand for and plead for judicial remedies.
**Functions of the Commission**

The Commission can exercise the following functions:\(^6\):

(a) 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;

(b) Present to the Central Govt., annually and at such other intervals, as the Commission may deem fit, reports upon the working of those safeguards;

(c) Inquire into violation of child rights and recommend initiation of proceedings in such cases;

(d) Examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disasters, domestic violence, HIV / AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures;

(e) Look into matters relating to children in need of special care and protection including children in distress, marginalized & disadvantaged children, children in conflict with law, juveniles, children without family and children of prisoners and recommend appropriate remedial measures;

(f) 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;

(g) Undertake and promote research in the field of child rights;

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\(^6\) Section 13
(h) Spread child rights literacy among various sections of the society and promote awareness of the safeguards available for protection of these rights through publications, media, seminars and other available means;

(i) 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 Central Govt. or any State Govt. or any other authority including any institution run by a social organization; 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;

(j) Inquire into complaints or take *suo moto* notice of matters related to:-

(a) deprivation & violation of child rights;

(b) non implementation of laws providing for protection and development of children;

(c) 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; and

(k) Perform such other functions considered necessary for the promotion of child rights and any other matter incidental to the above functions:

(l) Analyze existing law, policy and practice to assess compliance with Convention on the Rights of the Child,

(m) Present to the central Govt. annually and at such other intervals as the Commission may deem fit, reports upon the working of those safeguards;

(n) Undertake formal investigations where concern has been expressed either by children themselves or by concerned person on their behalf;
(o) Promote, respect and serious consideration of the views of children in its work and in that of all govt. departments and organizations dealing with child;

(p) Produce and disseminate information about child rights;

(q) Compile and analyse data on children;

(r) Promote the incorporation of child rights into the school curriculum, teachers training and training of personnel dealing with children.\(^7\)

The Commission strives for attaining these goals by:

(1) Making recommendations to concerned govt. or authorities for action in cases of violation of child rights noticed.

(2) Making recommendations to concerned Govt. or authorities concerned for action against the person responsible for violation of child rights.

(3) Approaching Supreme Court or High Court for directions, orders or writs, as deemed fit, for violation of child rights noticed.

(4) Making recommendations to concerned Govt. / authorities for grant of interim relief to the victim of child right violation or members of his family.

(5) Carrying out public hearings for cases of violation of child rights and making recommendations.

(6) Carrying out inspections, investigations for cases of violation of child rights and making recommendations.

\(^7\) The functions entrusted with the Commission show that it is overburdened. On a comparison with the functions of the National Human Rights Commission, the researcher feels that the same fate of ‘overworking’ will happen in this case too.
(7) Carrying out review of laws, condition of Children’s Homes etc. through working groups, committees constituted for the purpose and making recommendations.

(8) Making studies or carrying out research on all aspects related to child rights, compilation of data and making recommendations.

(9) Creating awareness through seminars, workshops, publications etc.  

Need for Societal Participation

The functioning of the Commission will be fruitful only with the participation and involvement of the society. The Charter of the Commission itself invites every organization, public or private and all citizens:

(i) to interact with the Commission to improve its efficiencies,

(ii) to imbibe the spirit of protection, safeguarding & promoting child rights;

(iii) to honour and abide by the Rules and Regulations framed by Govt. towards protection of child rights;

(iv) to share information with other citizens on protection of child rights;

(v) to bring cases of violation of child rights to the notice of the Commission;

(vi) to offer suggestions to streamline the functioning of the existing institutions related to child rights, promote accountability and responsibility, and

(vii) to adopt the precepts of protection of child rights.

. The Central or State Governments or UT Administrations or Organisations or NGOS or Professional bodies and other concerned organizations

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8 See also the Rules, 2006
are required to send all communication and information in a complete manner accompanied with the required documents.

**The Commissioner of Children’s Rights in the UK**

It is quite interesting to analyse how the equivalent offices of Commissions for Child Rights are functioning in UK.

The UK equivalent of Child Rights Commission was launched under the Children Act, 2004. The office of the first London Children’s Rights Commissioner was started at the Millennium Wheel to prove that a Children’s Rights Commissioner improves the quality of decision-making, and that the UN Convention on the Rights of the Child is a proper standard for judging government in all its deeds concerning protection of Child Rights. The governmental authority did not appoint the Commissioner, but his office is funded by the National Lottery Charities Board, two other charities and three of the country’s leading children’s groups, of all levels and performances. The works start in London – to make the case that **every child should have a children’s rights commissioner**\(^{10}\), the functions of whom made the rights of children had been seen in a national context.

The UK will shortly be shifting up a notch in the rights protection community when the Human Rights Act is fully proclaimed. The Act doesn’t set up a Human Rights Commission, but leaves it to Britain’s Common Law courts to determine whether public authorities have complied with the standards set by the European Convention on Human Rights.

Children are entitled to the benefit of all of the Convention Rights. And yet, children’s rights are constantly legitimated. At a local government level there is genuine, long-standing interest in children’s rights, perhaps because the boroughs are responsible for the child protection system (there is no mandatory reporting, here). Several have created ‘children’s rights officers’, funded by

\(^{10}\) Emphasis supplied
charitable bodies, to advocate for children against violations of rights. Several have adopted the UN Convention on the Rights of the Child as their values base. Children are required to have appropriate complaints or grievance procedures – though they appear to be underused. Some central government programs (such as Quality Protects) require boroughs to consult with children on service delivery and report on the consultation as a performance measure. There is willingness in the English professionals to talk on children’s rights, which is refreshing. The Association of Lawyers for Children has co-opted men and women in the fields of child care to their committees to work with.

A hundred children’s groups and prominent professionals have formed the ‘Children Are Unbeatable’ alliance to persuade the government to prohibit all corporal punishment of children. The prospects are not entirely favourable. The government’s discussion paper proposed law changes to prescribe what parts of a child’s body one could smite etc.

Yet the government appears genuinely with the assistance of Child Rights Commission, committed to, among other things, eliminate child poverty. The Prime Minster set up a Children’s Unit, with all the important ministers on the committee, addressing several government portfolios (but sadly administered on a day to day basis on the Education ministry under the supervision of a non-Cabinet Minister). The Unit will focus on child poverty, but there is clearly potential for it to develop the kind of government policy overview that ‘children’s rights advocates’ want.

But, apart from such scattered things, there are no plans for a Children’s Rights Commissioner as in India. The functions and responsibilities are not even spelt out in clear terms. There is no statutory children’s rights commissioner in the nation. The recent Care Standards Act, 2000\(^\text{11}\), which was enacted in response to

\(^{11}\) In November 1998 and March 1999, the Government published two White Papers on its proposals for social services in England and Wales. Detailed proposals for the regulation of private and voluntary healthcare in England and for the regulation and inspection of social care and healthcare services in Wales were set out in consultation documents issued in 1999. The Government's proposals for the regulation of early year’s education and day care were set out in a consultation document issued in 1998. The recommendations and proposals for the
the evidence of systemic abuse of children in Welsh institutions, creates an office called ‘children’s commissioner’ which is limited to ensuring children with effective grievance procedures. Scotland is ‘considering’ it; there is mixed support and opposition for such a system in England. The Greater London Authority’s members and Mayor were elected in May 2000, as a super-Council for the whole of London: above it, the national government and below, the boroughs, whose members are also elected and carry out essential planning and child protection, housing and other services. The Great London Authority is uniquely placed to oversee the state of London’s children. Every decision it makes, whether about planning, safety, transport, traffic, the environment or London’s cultural life, affects every London child, now and in the future. It needs a strategy for London children that cuts through all the boundaries.

The main purpose of the Act is to reform the regulatory system for care services in England and Wales. Care services range from residential care homes and nursing homes, children's homes, domiciliary care agencies, fostering agencies and voluntary adoption agencies through to private and voluntary healthcare services (including private hospitals and clinics and private primary care premises)\(^\text{12}\). For the first time, local authorities will be required to meet the same standards as independent sector providers.

In England the Act provides for an independent National Care Standards Commission to undertake this regulatory function. In Wales this function will be carried out by a new arm of the National Assembly for Wales, which will be established as either a department or an agency of the National Assembly for Wales.

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\(^{12}\) These new arrangements will replace those set out in the Registered Homes Act 1984 (which had been repealed in its entirety) and those provisions in the Children Act 1989 which deal with the regulation of voluntary children's homes and registered children's homes. Community homes will now be regulated.
The regulation of voluntary adoption societies will come under the umbrella of the new arrangements. Local authority fostering and adoption services will be subject to inspection. The compliance with the welfare arrangements in all boarding schools and further education colleges which accommodate children, will be examined.

The Act provides for the regulation of the social care workforce, by establishing a General Social Care Council (GSCC) for England, and a Care Council for Wales (CCW)\textsuperscript{13}. These Councils will regulate the training of social workers and raise standards in social care through codes of conduct and practice and through other means. For the first time a register of social care staff will be set up and maintained by each of the Councils. The Act makes provision for the abolition of the Central Council for Education and Training in Social Work (CCETSW), which currently regulates training in social work throughout the UK.

The Act establishes an office of the Children's Commissioner for Wales and sets out its functions and powers, which will extend to all the services for children regulated in Wales under the Act\textsuperscript{14}: children's homes, residential family centres, local authority fostering and adoption services, fostering agencies, voluntary adoption agencies, domiciliary care, the welfare aspects of daycare and child minding services for all children under the age of eight; and the welfare of children living away from home in boarding schools. The Commissioner's powers and functions include the review and monitoring of arrangements for dealing with complaints, ‘whistle blowing’ and advocacy; the examination of particular cases; and providing assistance, including financial, to a child in making a complaint or in other proceedings. These powers will also extend to children receiving services in other settings regulated under this Act, such as private hospitals.

Arrangements for the regulation of child minding and day care provision for young children will also be reformed\textsuperscript{15}. Responsibility for the regulatory

\begin{itemize}
\item \textsuperscript{13} Section 9
\item \textsuperscript{14} Section 10
\item \textsuperscript{15} see, section 11
\end{itemize}
function in England will transfer from local authorities to Her Majesty's Chief Inspector of Schools for England (HMCIS). This will bring together the regulation of childcare and early year's education. In Wales, these functions will be transferred to the new regulatory body for care services to be established as part of the National Assembly for Wales. Early year's education in Wales will continue to be inspected by Her Majesty's Chief Inspector of Education and Training in Wales. Under the revised arrangements in both England and Wales, regulation will be carried out to new national standards. In addition, those working with or coming into contact with older children will be required to demonstrate that they are suitable to do so.

**The Realities Faced by the Various Commissioners for Children & Other Similar Agencies in UK.**

London children make up more than 20% of London’s population - 1.74 million of them, from a glorious jumble of cultural, ethnic and community backgrounds. The majority of children of asylum seekers - about 45,000 children – are thought to attend London schools. It is thought that at least the same numbers of refugee children aren’t attending school at all.

Thousands of London children don’t go to school, either truanting or ‘excluded’ for misconduct. These exclusions are linked to parental poverty, ethnic minority status and poor reading skills.

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16. The Children Act, 1989 provides for three types of children's home: community homes (which include controlled and assisted community homes), voluntary homes and registered homes:

- **Community homes** (Part VI of the Children Act) are provided by, or partly financed by, local authorities. Homes provided and financed by local authorities are known as maintained community homes. Homes provided by a voluntary organisation and partly funded by local authorities are known as controlled or assisted community homes. Community homes are not required to register but are inspected by local authorities.

- **Voluntary homes** (Part VII of the Children Act) are provided by charities or other not-for-profit organisations (voluntary organisations). They are regulated by the Secretary of State.

**Registered Children's Homes** (Part VIII of the Children Act) are provided by private individuals or companies for profit. They are registered by the local authority. Small private children's homes which accommodate fewer than four children are not required to register at present and are not inspected.
Poverty has a grim effect on children’s well being, creating and exacerbating risks (homelessness, domestic violence and property crime), intensifying vulnerability, and diminishing resilience. Relative child poverty has trebled in the last 30 years. London has one of the biggest populations of deprived children in the developed world. Child poverty is usually caused by their parents’ unemployment. Poverty affects the quality of housing for families with children.

All these problems shall be tried to solve by the commissioners office, but the problem is the lack of organized governmental initiative\(^\text{17}\). The functions and operations are scattered in different offices holding same responsibilities. In practical sense, no co-ordination of these offices are effected.

**Idea of Child Participation & Functioning of Child Rights Commission in India: Comparative Overview**

The NCPCR believes that child participation is integral to addressing child rights. Therefore the Commission facilitates children’s participation to enable children to access their rights and entitlements\(^\text{18}\).

The Commission’s functioning is also informed by Article 12 of the United Nations Child Rights Charter indicating that, "States Parties shall assure to the child who is capable of forming his or her own views, the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child". Children are active stakeholders in defining and demonstrating their problems and addressing their vulnerabilities.

\(^{17}\) [http://www.11million.org.uk/content/publications/content_394](http://www.11million.org.uk/content/publications/content_394) visited on 21-04-2010

\(^{18}\) The Rules of the Commission for Protection of Child Rights Act, 2005 under Rule 17(e) and (d) mandates that the Commission:

1. Ensures that the work of the Commission is directly informed by the views of children in order to reflect their priorities and perspectives
2. Promotes, respects and seriously considers the views of children in its work and in that of all government departments and organisations dealing with children
The Commission encourages child participation in each one of its interventions. For example, during its state visits, the Commission emphasises the need to listen to children in public hearings. When children feel shy and need greater privacy, the Commission has maintained a space for children to speak with confidence and comfort. There is a response in contacting such children and after conducting an enquiry, the matter is settled in the best interest of the child, while, at the same time, the institutions are dealt with firmly.

In its interaction with children who have taken the courage to bring to the notice of the Commission matters regarding violation of their rights, it has been found that they have been patient, tolerant and even magnanimous. They have shown a sense of justice and amicability, despite the adversities they have faced. While the Commission honours complaints from children with utmost seriousness, children have also shown remarkable maturity in utilising the Commission’s space as their own.

The aspect of child participation is well recognized under the Children Act, 2004 of the UK\(^\text{19}\). The relevant partners are placed under a 'duty to cooperate in the making of arrangements to improve well-being' and have a power to pool budgets and share other resources. The Government is intending to add to this list of relevant partners other bodies including maintained schools, Academies, further education and sixth form colleges and Job Centre Plus, to bring key delivery partners into the strategic planning role of the child protection.

As in England, apart from the national programmes, state to state and region to region and locality to locality programmes shall be arranged in India also. The national framework would prepare schemes for local change programmes to build services around the needs of children and young people so that they could maximise opportunity and minimise risk. The services that reach every child and young person have a crucial role to play in shifting the focus from dealing with the consequences of difficulties in children’s lives to preventing

\(^{19}\) The Children Act 2004 provides the legal underpinning for the transformation of children's services as set out in the Every Child Matters: Change for Children programme. Section 10 of the Act provides the statutory basis for Children's Trusts (the duty to cooperate)
things from going wrong in the first place. The transformation that we need can only be delivered through local leaders working together in strong partnership with local communities on a programme of change. That is why this research sets out a proposition that what action needs to be taken by the Commission shall start locally and from the lessons of UK, our Government can work with and support Local Authorities and their partners. In all moves of the Commission, the interests of the children involved may be tried to be gathered by way of counseling, meetings, public addressing etc., by the local wings of the Commission.

**Appraisal of the Functioning the NCPCR**

The positive role of National Commission for the protection of child rights has been reported many a time. For example, in 2007, it took initiatives to protect school children from harsh corporal punishments\(^{20}\). The commission wrote to all chief education secretaries recommending that there should be no gradations while judging corporal punishment and that even small acts should not be condoned as they may lead to gross violations. This initiative of the commission actually aimed to ensure the enforcement of international recommendations in this regard also\(^{21}\).

The involvement and assistance of Panchayat Raj Institution in child protection matters with the commission has made commendable results. For example, in Meghalaya, 132 cases of children missing were reported through the initiative of local Panchayats\(^{22}\). In Bangalore, the child Rights Trust, has been holding special gram sabhas with the support of the rural development and Panchayat Raj department.\(^{23}\).

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\(^{23}\) *Ibid*
Another notable instance is that the NCPCR had submitted its reports towards the strategies for protection of child rights especially for abolition of child labour in Eleventh plan\(^24\).

Again, the commission has started a helpline on education in the light of the rights of children free and compulsory education act, 2009\(^25\).

In another instance, on a complaint filed by a local college student, of Nawanshahr, the NCPCR has asked the chief election commissioner of India to issue necessary instructions to the authorities concerned\(^26\).

In yet another instance guidelines were issued by the commission to the Railway Authorities for the protection of Railway children\(^27\).

Again in another situation, the expert NCPCR visited Amaravati district, in the light of the information about the problems being faced by tribal children\(^28\) in

\(^{24}\) Report submitted to the Planning Commission, India, September 2007


\(^{26}\) Available at http://punjabnewslined.com

\(^{27}\) Suggestions:

1. Ban sale of white fluid at railway platforms as the children are increasing getting into this substance abuse.
2. Railway authorities must accept safeguarding the rights of children on railway platforms as their responsibility
3. Facilities for medical treatment should be readily available to the abused children at railway platforms
4. Children on railway platforms should be classified into various categories
5. Rights of child ragpickers should be safeguarded as they take care of the environment by removing plastic from the railway station.
6. Identify cards must be issued by the NCPCR to the Railway protection Force informing them of the rights of these children
7. There should be a centralised complaint system of displaced and missing children on railway platforms
8. There should be a centralised data base maintained by NCPCR regarding information sharing
9. A child welfare committee should be located near the railway station; see for details, the reports of the meetings of NCPCR held in October – November, 2007.

\(^{28}\) Report of the expert team, National Commission for protection of child Rights, November – December 2008; The main directives were the following: (i) universal coverage of children under the ICDS programme and timely release of funds for preparation of food at Anganwadi centres.
The most noteworthy aspect is that, in this case, the NCPCR has constituted a team in order to find out the progress on the directives issued by the commission.

All these incidents reveal the genuine attempts made by the NCPCR towards understanding the issues relating to child rights and the endeavours to solve the same through inviting partnership of various agencies and systematic follow ups.

The attempts of NCPCR again revealed that various Naxalite groups in India home formed their own children’s divisions\(^\text{29}\). Though the UN conducted investigations into these allegations, there were no credible reports of any Government security forces.

The NHRC has recommended that the state police head quarters should create a system of mandating reporting of all incidents of missing children to the NCPCR within 24 hours\(^\text{30}\).

All these activities of the NCPCR show that the commission is actively involved in discharging the responsibilities entrusted to it by the 2005 Act.

**Conclusion**

The overall study of the functioning of the Commissions shows, the main drawback of the Child Rights Commission is that it is a mere replica of other commissions like Human Rights Commission\(^\text{31}\) and Women’s Commission. Its role is limited to just recommendatory directives and they lack any power to enforce their recommendations.

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\(^{31}\) Though a Human Rights Commission is an autonomous and prestigious ‘expert body’ created for the sake of promoting and protecting human rights in India, it lacks punitive teeth as its findings and directions lack binding force, they being in the realm of recommendations to the Central and State Governments...”; See V.K. Sircar, Protection of Human Rights in India, ASIA LAW HOUSE, Hyderabad, 2004 at p. 111
There is no time frame for the completion of the enquiries or investigations.

The time limit, within which the state governments have to set up their own commissions, has not been specifically stipulated.

The offices of the commissions should be structured at the lower levels\(^{32}\) like district and panchayat levels so that any child or children’s group can have access to the office of the commission and should have the opportunity to impart their own participation.

\(^{32}\) The states of Assam, Delhi, Goa, Maharashtra, Madhya Pradesh, Karnataka and Sikkim have constituted State Commissions.