

MONITORING CHILDREN'S RIGHTS
NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS - INDIA
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This paper gives an overview of the procedures adopted by the National Commission for Protection of Child Rights (NCPCR or the Commission) for monitoring children's rights in the country and reviewing the legal and policy frameworks in the context thereof. Considering the magnitude and size of the population of children in India, the Commission has evolved some methodologies such as field visits and visits to the States, which have entailed meeting and dialoguing directly with children, civil society, NGOs, and the state; conducting public hearings; issuance of communications in the form of letters, directives, guidelines and recommendations to the Government; policy dialogue with concerned ministries; review of laws and policies; responding to direct complaints and taking *suo moto* cognisance of violation of child rights; constituting thematic working groups; and consultations through seminars, workshops conferences; highlighting issues relating to children for the Judiciary and identifying the gaps in the systems in order to obtain appropriate orders to protect children and assure them of all their entitlements, and so on; involving the direct participation of children in many of the Commission's discussions and interactions, thereby providing a voice for children and creating a platform for them to address their grievances. Care has been taken to listen to children, child defenders and voices from the ground and to bring their concerns to the establishment at all levels.

I. INTRODUCTION

India manages the largest network of State run public institutions in the world today reaching out to the maximum number of children in schools. Over 0.9 million schools, 3.6 million school teachers cover 143 million children in the 6-14 years age group and the largest noon meal program in schools covering 131.69 million children. It has the largest immunization program and nutrition program with 1.4 million early child care (anganwadi) centers covering over 80 million children. It addresses children from the most vulnerable communities such as the scheduled caste and scheduled tribes through affirmative action as mandated by the

Constitution of India and provides a range of targeted initiatives and infrastructure such as scholarships, residential schools, hostel facilities and so on.

As a large country with diversity in economic attainment, political and institutional histories of the states, and cultural specificities, the quality of services is not consistent and continues to represent a key challenge in ensuring equal access to their fundamental rights by all children. While there have been gainful achievements in some areas in the country with some States, districts and blocks doing better than the rest on the child development indicators of health, nutrition, education and other entitlements-these continue to be abysmally poor in some pockets for certain classes of children and more disadvantaged communities.

The contemporary times whilst bringing advances in many areas, has also intensified the dangers to childhood and has been extraordinarily harsh to many children in our country. More and more children are vulnerable and marginalized today. Having no food to eat, and little or no health support, they live precariously, experiencing hunger daily and suffer malnourishment, their lives claimed tragically by infant and child mortality. Older children are being trafficked and are working as migrant child labor, usually away from their homes. Children travel long distances across states. Networks of sourcing children from one end of the country to another, exists across India, from Manipur to Chennai, Bihar to Punjab, Kerala, Rajasthan, Orissa to Mumbai and Gujarat. On their way to work and even in the work places, it is an undisputed fact that children are subject to abuse, torture and gross exploitation. Those who remain in their own communities and are at work are also victims of cruel market forces and lack access to State services and protective schemes. Child marriages, child trafficking and discrimination of girls remain crucial challenges. There is a growing number of children being affected and infected with HIV and AIDS, displacement due to natural disasters and civil unrest, representing a new generation of hazards facing the child in this country.

Considering the fact that issues relating to children are as much in the list of the Centre as the State governments, the Commission's thrust has been in understanding and reviewing the basis, application and actual implementation of legal frameworks, policies and programs at both levels. Our Commission is fully conscious of its role in the context of India's federalism and the dynamics of Centre-State relations.

II. PERSPECTIVES

The following perspectives guide the Commission in all its work:

1. **All children are equally important and all the rights of children are of equal importance.** Every right the child enjoys is mutually reinforcing and interdependent. Therefore the issue of gradation of rights does not arise.
2. **Every age within the 0 to 18 years age bracket, is of equal importance.** A child enjoying all her rights at her 18th year is dependent on the access the child has had to all her entitlements from the time she is born. Thus policies and interventions at all stages in a child's growth and development assume equal significance.
3. It is the **State's obligation to protect children's rights.** The civil society is to be seen as an equal partner to create an environment where child is in the centre of all decisions.
4. The **principle of non-discrimination and equality** has to be adhered to in operationalising services to children who are differently placed and in unjust circumstances.
5. Each and every child would gain access to her entitlements in a **universal approach that is inherently inclusive.** Although a targeted program of reaching out to children in most deprived communities, in backward regions or those with special needs is important, it has to be rooted in a shared vision of protection of all children in our country to be effective.
6. **Children are to be embedded in their culture and environment to feel empowered.** The diversity and plurality of their cosmos have to be respected where they blossom in a natural fashion. However on some occasions, child rights are violated and even justified in the name of preserving cultural practices and tradition. When there is a conflict between culture and child rights, **children's rights must take precedence and old cultures and traditions** must adjust to give primacy to children's needs and rights.
7. **The best has to therefore be given in a time-bound manner without any waiting.** It is often heard that it is impractical to cover all children, and all services at one go

and so ‘doable’ ‘practical’ targets are to be defined. It is not practical to keep some children on hold and let them suffer due to our incapacities. It does not make sense for the child concerned to be asked to wait till the world of adult is ready for them. Childhood comes only once. A lost childhood can never be regained. The long term effects of children who have missed out on their basic entitlements and its impact on their vulnerabilities as they grow has lasting implications for children, and the society at large. Thus a distinction between short term needs that require immediate action and the vision for long term goals does not make sense as far as the child is concerned.

- 8. Use of authority and power over the child by the adult is unacceptable.** Children are to be seen as equal to and not as less than adults. Indeed because of their special circumstances and needs they are more than equals.
- 9. Taking uncompromising stands** in favour of children and their rights is the first step towards the process of listening to children and recommending policy and legal reforms.

III. METHODOLOGY

The Commission has utilised the following methods to collect information and recommend actions to be taken up by the State.

1. STATE VISITS

Periodic visits to the States are made based on the fact that, issues pertaining to children’s rights are subjects under the State List or the Concurrent List of the Union government. The methodology constitutes field visits to the selected area for investigation, to enquire into children’s access to public institutions and an interaction with the local bodies, community, district level officials, NGOs, women’s groups, parents and children. The district authorities would be present during such visits and issues that had remained unresolved for a long period of time in spite of repeated complaints, are highlighted by the Commission. Some of the issues are rectified almost instantaneously while others need a more systemic correction from State Government authorities.

The visits showed the anonymous and dedicated work of local officials and the hope they demonstrated all through. It also gave an opportunity to appreciate the work of the local volunteers who stood against all odds for bringing about change in the lives of children.

The Commission's message is to highlight the indispensability of a synergy between all the stakeholders for attainment of child rights. At times the meeting takes the form of a public hearing.

Subsequently there is a meeting with the State level officials from the Departments of Women and Child, Social Justice, Police, Labor, and so on headed by the Chief Secretary of the State. This typically involves an introduction of the Commission's mandate as well as a briefing from the State government about its policies and programs, reforms and best practices. The visits are followed up with letters and reports to the government on proposed action plans, issuing of reminders, deputing persons on behalf of the Commission for a status report and further one-to-one meetings with specific departments in the States to ensure adequate action is taken to redress issues.

2. PUBLIC HEARINGS

Public Hearings have become an important tool for conducting an open and transparent enquiry where voices of children and their protagonists are heard in the presence of the NCPCR and senior officials of the government. The hearings are held based on specific complaints received from the civil society on gross violation of children's rights on a massive scale, or/and media reports corroborating the same. The Commission registers a complaint with the authorities, asking for a time-bound response. In the meantime, the Commission conducts its own research on the relevant policies, programmes and legal frameworks concerning the issue and further consults with those in the government and in the civil society, who have insights into the specific issue. When a clear response to the complaint is not forthcoming, the Commission constitutes a jury with experts for the hearing. In the hearing, testimonies are heard, written complaints and petitions are received and there is a video recording of the proceedings wherever possible. Many issues get resolved then and there. On return from the hearing, the Commission takes up the issues that require both short term corrective solutions and long term policy decisions with the district authorities as well as the State level officials in the Secretariat-and where required, with the Central government.

This is followed up with recommendations of the Commission and field visits of experts to monitor the action taken.

The NCPCR has been moved by the heroic accounts of young children who repeatedly risked their lives to escape drudgery and solitude for freedom and liberation. During the public hearing on child labour in cotton seed farming, where the purpose was to look at the violation of rights of children engaged in production of hybrid cotton seeds, the Commission also gained insights into how large numbers of children migrating from Rajasthan to Gujarat, also work in ginning mills, textile factories, salt pans, brick kilns, etc. Their workload is very often heavier than that of an adult!

The NCPCR's public hearings on corporal punishment in Tamil Nadu also revealed the insult and injustice meted out to poor children, driving some of them to attempt suicide and even commit suicide. This gave the Commission a deeper knowledge on the impact of corporal punishment on girls and boys, their loneliness and lack of support and forums to express their difficulties with and within the school system.

The testimonies of children in the public hearings on children affected and infected with HIV and AIDS, have been equally revealing. Interestingly, many children wanted to be heard and so were not wishing for 'confidentiality' during the proceedings. They preferred to exercise their agency and testified in public about stigmatisation and lack of services.

Its public hearings in Dantewada showed how vulnerable tribal children were victimized by all parties – both the government and non-government agencies – and deprived of their basic rights to health, survival, food and nutrition, education and protection. It revealed the impact civil unrest can have on children. These are only some examples of the public hearings the Commission held. In most of them, the numbers who attended were not less than 500 from the community.

The testimonies received in public hearings are followed up consistently by the Commission, and whenever in doubt, a feedback from local NGO's is enlisted on action taken report submitted by the government.

3. ISSUANCE OF COMMUNICATIONS IN THE FORM OF LETTERS, DIRECTIVES, GUIDELINES AND RECOMMENDATIONS TO THE GOVERNMENT

Based on implementation gaps and/ or violations observed, on several occasions, specific directives have been issued as guidelines for immediate government action. These directives are often in response to the Commission's independent assessment of growing complaints and media reports related to a particular issue affecting the liberty and rights of children in a particular state context. Most of the directives and guidelines demonstrate a strong sense of urgency and call for a rights based perspective on the problem issue at hand. The response to the guidelines from the states as well as media has been heartening. They have often been taken up for discussion and debate and have generated wide public awareness and dialogue on important issues. While it is difficult to gauge the response to all guidelines issued, in some exceptional cases, there have been positive reports of action taken by the district administration. This is encouraging for the Commission which sees this as an important instrument for generating debate on children and reinforcing commitment to legal and policy postulations.

4. POLICY DIALOGUE WITH CONCERNED MINISTRIES

The Commission has also sought special meetings with the Ministries to discuss thematic considerations on status of children. For example with the Home Ministry on children's rights in areas of civil unrest. In connection, thereto, the Commission has prepared a policy document which specifically addresses the issues and needs of children in areas of civil unrest (which is the first of its kind) ; tribal ministry on provisioning of residential schools for tribal children; women and child ministry on child protection, juvenile justice and malnutrition; labour ministry on child labour and trafficking; education ministry on the implementation of right to education; panchayat raj ministry on the role of local bodies and so on. These meetings serve the purpose of both information sharing between ministry and commission and also enabling a rights based policy for children.

5. REVIEW OF LAWS AND POLICIES

NCPCR reviewed the national legal framework, policies and implementation strategies to assess effectiveness and impact, and to ensure that a child rights perspective is adhered to.

As part of this, NCPCR undertakes analysis of legal frameworks and new policies that might have a direct/ indirect impact on children.

Consultations were held with civil society partners, State officials, experts and scholars through regional and National workshops on the issue.

5.1 Child Labour (Prohibition and Regulation) Act 1986

From a rights based perspective, the NCPCR considers that there can be no excuse for existence of child labour and violation of children's rights. There can be no distinction between child labour and child work, or hazardous labour and non-hazardous labour. The definition of 'child labour' must encompass children working for the families in their own homes, children in agriculture work, work rendered by girl children and all other forms of work that deprives them of their right to education in a full time formal school. It recommended that the definition of 'child labour' be inclusive and recognize all forms of child labour as prohibitive and to include children up to 18 years of age. The NCPCR calls for a consonance of the between child labour law with the Act on 'Right of Children for Free and Compulsory Education-2009' that guarantees education as a fundamental right to all children in the 6-14 years age group. The NCPCR has reflected its stand in a policy document and as well suggested reform in this area.

5.2 Reforms in Juvenile Justice System

It was found that the failures in the Juvenile Justice system predominantly related to the entrenched criminalization and institutionalization of children in conflict with the law and children in need of care and protection. This is reflected in the pervasive violation of children's fundamental rights in every step of a child's contact with the JJ system. Importantly, there was a fundamental lack of recognition within the JJ system that:

- children in conflict with law are also children in need of care and protection;
- children in need of care and protection are also at risk of becoming children in conflict with law; and
- all 'at risk' children are also potential entitlement holders of the JJ system

NCPCR has identified the following six (overlapping and inter-related) areas for priority reform under existing the Juvenile Justice policy and legislation-

- An inclusive in coverage and reach of categories of children who are currently unaddressed or excluded due to procedural or operational barriers.
- Institutionalize processes and ensure professionalization of actors in the Juvenile Justice system.
- Reforms in procedural implementation (intake, adjudication and disposition) of the Juvenile Justice Boards to ensure fairness in line with child jurisprudential principles.
- Operationalise non-institutional, alternate care provision to ensure durable placement outcomes for children without access to parental care; and appropriate re-unification processes for children returning to parental care.
- Transform quality of care in existing Homes to eliminate child rights violations and ensure consistent standards of care through reform of governance, schooling re-integration and education provision within and outside the home premises, mental health provision and rehabilitation programming.
- Establish strategies for prevention of children falling into ‘at risk’ category through early intervention by community based child protective services mobilised at district and block levels.

5.3 Child Rights in Areas of Civil Unrest

Children are the worst affected in times of civil unrest and such displacement. Having no access to food, water, health care and basic amenities, they have suffered the most. Hunger and starvation leading to malnutrition is not uncommon. Children’s education has been compromised resulting in school drop outs and a large number of children not attending schools. This is especially true of children of families in relief camps or of migrant labor. Having no documentation regarding age proof, address, school progress reports children are unable to join schools in the new areas. Older children have been left to fend for themselves and some of them have been caught in the web of illegal activities and even in armed conflict, having none of the options that come through literacy and education. Several of them have joined networks of trafficking as child labor and also for sex work. Hundreds and thousands of children are thus affected. Even in habitations where families have stayed back, access to education, health, nutrition and so on is non-existent as public servants have stopped visiting the habitations out of fear.

In all these areas the NCPCR has also come across children who have lost link with their families and are even orphaned. Young girls have been victims of physical and sexual abuse.

The Commission has enquired into the plight of children in such camps in Dantewada in the State of Chhattisgarh, NC Hills District, Chirang District and New Bongaigaon District in the State of Assam, in Ashapara and Naisingpur camps at Kanchanpur in North Tripura District in the State of Tripura and Kandahmal in State of Orissa. It has taken up the issue of entitlements of children of migrant households who are struggling to be integrated into the local community but remain outsiders, and seen as competing with local poor as in Khammam district in Andhra Pradesh. It has intervened in situations where the community has remained in the villages where there has been a total disruption of services as in the case of Sukma block in Dantewada district of Chattisgarh.

The experience of NCPCR in Chattisgarh and other areas has shown that the local youth are capable of taking charge of children and their lives if given the necessary support and skills for a program of community mobilization. This has enabled, in a small way, stability in the lives of children in the process of ensuring that all their entitlements to protection, health, nutrition, sanitation, education and safety, are fulfilled through government action. Indeed it has also enhanced democracy through community participation and action and renewed hope in harmonizing the society and stabilizing their lives while a child's well-being became the focus of all action in the area.

The Commission also submitted a policy document for protection of children's rights in areas of civil unrest.

5.4 Right to Education Act

NCPCR has been mandated to monitor the implementation of the right to education Act that has been enacted in 2009. The RTE Act is historic as it makes it a State obligation to provide for free and compulsory education to every child of the age of 6-14 years in a neighborhood - a welcome step¹. This would enable millions of out of school children who have been drawn into harmful and illegal nexuses of labour, trafficking and work in domestic as well as informal sector join schools.

The Commission is in the process of creating requisite accountability mechanisms at the local level for the upholding of the right to all children and for ensuring speedy resolution of grievances and disputes. Also to introduce a system of social audit of children's access and retention in schools as well as the school infrastructure , teacher attendance and support systems to schools at the block and district level. And how the quasi-judicial powers vested in the NCPCR and its State level organs can be effectively put to work for the welfare of all children of India. NCPCR is in the process of creating RTE Advisers at the States who will in turn network with hundreds and thousands of child defenders at the grass root level. The relationship the child defenders have with the rescued child labourer, children who are physically and mentally challenged, whose thirst for knowing is boundless, is one of aesthetics and beauty. They bring to the fore issues of social justice and equity, access to services and State obligation, citizenship and participation, democracy. We have seen poetry, literature; music and songs emerge in abundance when every child is welcomed to the portals of schools. A non-violent, silent social transformation for citizenship and rights is launched in this process.

An undercurrent of cynicism about government and its capacity to deliver is slowly getting solidified. Such a discourse does not encourage or build the capacities of the State to deliver services, but allows for abdication of the State's obligation towards its children. More than anything else it systematically augments de-legitimization of the State. All of us are aware that there is no other institution in contemporary times that can parallel the State especially for the protection of rights.

Therefore when the State falters and creates structures and processes that exclude children, the solution would be in not abandoning the State but in reforming its system, rethinking its policies on children, making greater investments and constantly bring to the fore the rights-based perspective that resonates with the values of democracy, justice and equity as enshrined in the Constitution of India. This requires galvanizing the energies of all in society to create an atmosphere where the rights of children are protected as a State obligation and guaranteed by the State as political expression.

5.5 Corporal Punishment

The Commission has heard innumerable cases of corporal punishment, and violence and suicide of children for being subject to insinuating and often unreasonable remarks by school teachers². In that year, 2008 it was reported that there were 98 suicides of children in Tamil Nadu alone as a consequence of corporal punishment. These gross acts have come to light through newspapers and electronic media and specific complaints made to the Commission. NCPCR held public hearings and heard children's testimonies on the issue.

The Right of Children to Free and Compulsory Education Act 2009 provides that no child shall be subject to "physical punishment or mental harassment" in schools³. Those officials that contravene this provision shall be liable for disciplinary action under service rules applicable to them. However, the provision does not *criminalise* corporal punishment; it does not resolve contradictory provisions in criminal law in favour of an absolute ban. Nor does it lay down a standardised penalty for corporal punishment that should be incorporated in service rules to punish corporal punishment. In practice, this could mean corporal punishment is penalised very lightly, which would have little deterrent effect given how widely it is accepted as a method of discipline.

The Commission issued guidelines to schools, local bodies, district and State authorities on corporal punishment. No distinction between forms of violence was made as it considered that, 'all forms of corporal punishment are a fundamental breach of human rights'. It stated that 'a slap is as detrimental to the child's right as grievous injury... Indeed there are no gradations since it must be seen that condoning so called 'small acts' actually lead to gross violations.'⁴

Considering that there is a wide societal acceptance for corporal punishment as normal it recommended a campaign where children, parents and child defenders alike gain confidence to speak up against the practice of corporal punishment in schools and other institutions. Further it recommended that every school, including hostels, JJ Homes, shelter homes has a for children to express their views and if available involve an NGO. It suggested that there is a complaint box , in each school where complaints even if anonymous are entertained. The Commission also indicated monthly PTA meetings be held to review the complaints and they

be encouraged to act immediately on any complaints made by children without postponement of the issue and wait for a more grave injury to be caused.

It is not just the school teacher but the school management including the school principal must take equal responsibility for ensuring that corporal punishment is not practiced in schools. They must make every effort to see that the culture of violence on children is replaced with a culture of non-violence and positive engagement of the teacher with children. To prevent assault on children all the above set of practices are to be monitored by the education department as they are finally responsible for monitoring the schools.

Further in case of severe violence resulting in hospitalisation or death of a child, the Commission has directed that there has to be criminal proceedings against the school teacher and the management and immediate suspension of the teacher concerned, pending departmental enquiry. The expenses towards health has to be met by the school/education department, and the child has to be supported through scholarship, fee waiver and other school charges by the government until completion of school education. In case of suicide there has to be booking of charges of aid and abetment to suicide on the concerned school teacher and the child who attempts to commit suicide shall be given counselling and all support to live a normal life.

The government school teachers often justify violence as they find the work conditions are undoubtedly adverse. There are overcrowded classes, not enough text books, first-generation learners etc. But children are not responsible for all these problems that teachers face in performing their duties. The teacher must take up these issues through their unions with the education system. It is incorrect to victimize the children who are the weakest in the system who can never provide answers to structural deficiencies. Besides, this is not to say that there is no violence or corporal punishment on children in well-to do schools. Teachers also often mention that without disciplining children, it is difficult to have any meaningful transaction in the classroom.

The more fundamental issue is whether children are to be disciplined. The current debate has substituted the practice of 'positive discipline' of children in the place of corporal punishment. Although the elements of positive discipline emphasise interaction with children,

respecting them and not punishing them, it is still within the bounds of a structure of authority of the teacher of the child. There is an undercurrent of acceptance that children need to be disciplined and told how to behave. This again positions the teacher and the child in an unequal relationship. It is important that the vocabulary used in this context changes to express equality in relationship. Thus, a more apt concept is the use of ‘positive engagement’ of the teacher with the children.

5.6 Child Abuse

The Commission has also received several complaints on child sexual abuse.⁵ It is found that child sexual abuse and violence occurs in the family by members, relatives and other people they trust or known to them, in institutions such as schools, homes, hostels, orphanages, by persons in position of trust causing aggravated sexual assault. Sexual violence is also rampant through pornography, internet or via commercial sex exploitation and sex tourism. Both boys and girls are victimized. The offenders, too, are not necessarily only males.

Considering the social pressure and prevalent taboos most often sexual offence goes unreported and is under wraps. The victim is silenced because of the power imbalance between the perpetrator of crime and the child. Children who are very young are not in a position to tell and those who know something very wrong has happened often do not have spaces to be heard. It is only when an adult notices the change in behavior of the child and takes courage to question that the first step of registration of complaint occurs. It is found that there are gaps in procedures for registration of complaints, collection of evidence, police involvement in investigation, court procedures and rehabilitation mechanisms resulting in re-victimisation of the child. At every step there is a challenge, making it impossible to take the case to a logical conclusion.

The Commission is involved in drafting of a law against sexual offences against children. Some of the concerns in the process of drafting the legislations are as follows.

To begin with, **should a distinction be drawn in such a definition for a child as against the adult?** Very young children are in no position to even complain and older children would have to be given an enabling environment and abundance of counselling to complain and

even be ready for deposition. The impact and long term damage it could cause on a child is severe. When compared to the adult a child is far more vulnerable.

Where does the complaint get lodged? How is the statement of the child recorded and who does that? When the Commission receives its complaint from the parent, guardian or well wishers of the child it has been found that the existing procedure by law requires registering a complaint with the police station before any action is taken. Consequently parents have dithered and decide to withdraw the case. They are just not ready to subject their child to further victimization by having to depose and re-live the agony. This is so even when they have been given the confidence that utmost confidentiality would be maintained.

It is here that before the police come into action, there **is a need for a pre-investigative stage** where the Child Line, Child Welfare Committees, District and State Child Protection Societies, Legal Aid Services, as well as local hospitals will have to provide the professional support for the victim. The services of specialized child counsellors are to be utilized by all these agencies. The coming together of multi-sectoral professional begins at this stage itself. There is a need to inform the child, her family, in an age appropriate manner the essence of child friendly code.

Considering that the child is in no position to complain, forensic and other corroborative evidence have to be given weight. Indeed the evidence collection now must be a part of child jurisprudence and thus a need to see how this procedure can be accommodated in the Indian Evidence Act. If the child is in need of emergent medical care, immediate steps to ensure that proper medical care is made available. The medical practitioner should follow the prescribed protocols for recording findings of the medical examination. In case of non physical injury and acute trauma, arrangements for the best psycho-social support to help the child recover are needed. The challenge is in creating evidence regarding non physical contact/abuse which makes a child uneasy, even terrorize a child, and in giving equal importance to a mental health perspective as in the case of physical abuse. These gaps are to be addressed through law and also adequate training and budgetary support is to be given to enhance the capacities of all professional services.

The criminal justice administration system is primarily geared to deal with adults and the investigation of crime is entrusted to the police. **Under such a system, how can ‘best**

interests' of the child victims and witnesses be achieved and safeguarded. The judges in this regard are to enable the child participate, especially where the child proactively so desires. In case a child is unprepared the option for use of technology and video-recording; conduct in chamber procedures; evidence gathering through commissions; practice of questions being passed on to the child through the judge; and even postpone or abandon the enquiry pending child's preparedness; and many more child friendly protocols are to be evolved. All of these factors mean that the judge, defence lawyers and public prosecutors are to have particular experience or knowledge of the incidence of child sexual assault and the behaviour of child sex offenders.

It must be noted that extending special measures to the child is not because the child is considered to be incompetent to give evidence but rather to give the child support such that the best quality evidence is forthcoming.

Considering that every day counts for the child there has to be a speedy process of trial by Special/Children's Courts identified for the purpose.

What if the offender is father, uncle, brother, a family member or resident of the same house? In such an instance, the views of the mother of the child and other siblings about all domestic implications of proceeding to trial are ascertained. Even if the offender is the only earning member of the family, he must be separated from the family, and the Magistrate shall issue necessary orders, including arrest of the offender and ask for appropriate intervention of the authorities concerned to enable the family in distress to live with dignity. On some occasions, when the offender cannot be separated, a higher level police officer has to intervene to admonish the alleged offender and bind him over for good conduct followed by periodic police reports.

What are the protection and rehabilitation measures? It is equally important that the child is rehabilitated and given effective long term support. Child abuse destroys child's confidence and self-esteem. Child's agency is snatched away. Their experience with peers and one's own could also be damaging and they could feel 'yucky' from within even as they are made to feel guilty. Families get devastated especially if the abuser is in the family. Victim impact assessment has to be done and children must have access to services of rehabilitation with psychological counselling, empowerment of the child to exercise agency,

legal redressal, education, and continuous health support wherever necessary, reclamation of personhood and affirmative sexuality have to be guaranteed through professional services. Civil remedies and protection has to be provided even for children who are unprepared or unwilling to seek criminal justice and enter the ponderous legal system.

We are still to evolve child friendly processes. Most of the services at the moment are inadequate. The procedures of rendering justice as it exists at every stage disrupt normalization and healing process of the child. Instead of legal redressal being therapeutic childhood is sacrificed for justice to be obtained.

6. RESPONDING TO DIRECT COMPLAINTS

The Commission responded to complaints related to issues of corporal punishment, child malnutrition, lack of education, child labor and trafficking, child abuse, juvenile justice, and so on. It has developed internal protocols for receipt and response to complaints. It conducts direct investigations, which often entail holding deliberations with experts and government officials. In all its redressal efforts, the Commission ensures that the identity, dignity and privacy of children is protected. The NCPCR also holds on-going deliberations with experts as well as government officials regarding specific issues on a one on one basis, to seek information on children.

Utilizing its authority under law, it has summoned officials to explain what action has not been taken in spite of repeated reminders and fixed time lines for action to be taken.

7. SEEKING JUDICIAL INTERVENTION & ORDERS (I.E. SUPREME COURT AND HIGH COURT) TOWARDS CHILD PROTECTION AND CHILD RIGHTS

The Commission has successfully interfaced with higher Judiciary to ensure that child rights issues are addressed, children are protected and assured of all their entitlements, and the laws and systems are effectively implemented. In several matters, the Supreme Court and High Court(s) have asked the Commission to provide inputs and guidance from a child rights angle and/ or to provide workable action plans towards effective implementation of laws and child protection. One such example is the Child Labour Action plan, prepared by the Commission,

on the request of the Delhi High Court, on which effective orders were eventually passed. As a result, the Delhi Government was directed to adopt the said Action plan and provide periodic reports to the High Court on its implementation. Likewise, on issues relating to reforms in the Juvenile Justice System and status of homes for children; child trafficking; children of prisoners and so on.

The Commission has endeavored to hold discussions with the Judiciary around the country to obtain their views on issues pertaining to child jurisprudence, sensitization of the judiciary towards child rights, and the urgent need to develop a system and a bench book which addresses children and their issues quickly without compromising them in any manner – the focus being to assure ALL children, protection and all their rights and entitlements. The interaction and dialogue has been meaningful, to say the least.

8. WORKING GROUPS

The constitution of expert working groups has been an important instrument of the Commission to formulate its views on policy and legal frameworks. Engaging with a group of multi-sectoral experts in a systematic fashion from across the country, across many States and in-depth analysis and studies has enabled the Commission to crystallize its understanding of the conditions of children and families within the context of their specific realities.

A meeting of the working group enabled rich collaborative experiences with government departments and NGOs that fed into the working groups' knowledge on the issue. It was also a process of mobilization having a spiraling effect on networks, small and big and also engaging with the officials who are grappling with the implementation of laws, schemes and programs. Indeed the functioning of the working group has been important as it showed that there are several strands of thought on protecting child rights and ensuring access to entitlements and arriving at a consensus on the best interest of the child is quite a challenge.

9. CONSULTATIONS – SEMINARS, WORKSHOPS, CONFERENCES

NCPCR conducted conferences with officials from the departments (social welfare, women and child development, health, education etc) who gave structured presentations on the progress of implementation and effectiveness of policies. For example, in the conference on

the juvenile justice system, juvenile homes and children in the context thereof that was held in three tranches, there was participation from the administrators as well as the Judiciary and police. There was a rich sharing of experiences, cross learning and a flood of innovative ideas on how the system should work and how it can be improved. Many challenges that needed greater inter-departmental as well as inter-state coordination came to the fore. Likewise, the perspectives of the Labour Commissioners from all the States were sought on the enforcement of law on child labour and the strengths and weaknesses in the Act.

There were also conferences at the national level that were held with participation of both NGOs and the government, Center and States, as in the case of deliberations on the need for a legal framework to protect the rights of children under six years of age.

It was also felt that the NCPCR had to listen to the voices of protagonists of child rights from the ground, especially the efforts of the local bodies and see how many such innovative practices could be institutionalized and taken to scale in the country as a whole. Thus, hearing the experiences of the gram panchayat members was inspirational with implications for institutionalizing monitoring of child rights through a process of deepening of democracy.

IV. CONCLUSION – END ABUSE AND VIOLENCE ON CHILDREN

In a way, ending all forms of violence on children, stopping child labour, corporal punishment, child abuse and discrimination is part of the history of unfolding of values that emphasise core humanistic principles of equality, freedom and justice and rights of individuals over the centuries such as emancipation of indentured and bonded labour, freeing serfs and peasantry from feudal forces of production and cultures, liberating countries and its peoples from colonial powers and imperialism. Until these shackles were broken it was felt that subjugation of people was inevitable and natural and that there was nothing unethical or immoral about prevalence of domination of one over the other.

The absolute value of human rights as inviolable has gained acceptance over the years and has come to stay. Anchoring on this women have asserted against patriarchy, the marginalised communities and groups have claimed rights both cultural and economic against overarching project of exclusionary modernisation and continue to challenge the existing

structure of economy, society and polity. In exercising their agency and in their acts of resistance they have questioned the existing hierarchies and structures of domination and power that inflicted violence on them – physical and emotional – and are constantly negotiating spaces in their favour.

Each time a new layer of society gains confidence to question and thus contributes to sharpening of what constitutes human values and daily practices of actualizing the new tradition; there is discovery of one more layer of domination that needs correction. In this instance it is the domination of the child by the adults. The liberty to treat children with authority by the adults comes from the understanding that children are less than adults and that the adults have a duty as well as a responsibility to control and discipline children. Therefore in the best interest of children adults can use force and violence to correct them. Thus the act of violence and exercise of power of the adult over the child is repeatedly justified. It is seldom regarded that children are individuals in their own right and equal to adults.

This happens even in a family situation. Children are subject to insults and are not heard quite inadvertently by adults. Punishing a child is seen as parental responsibility. The moment there is defiance of the child it is construed as being disrespectful. And so, the child is further admonished, very much like in the context of the school. Having no options children accept this as a reality and learn to live with it. The challenge is really in protecting children and making them feel secure and at the same time enhancing the quality of relationship between the adult and the child. For, in principle, family as an institution should be the best place for any child.

Indeed the questioning of domination of the adults, say ‘adulthood’ over the child is part of this unfolding of the human spirit and in favor of respecting a culture of empathy and non-violence that should govern the relationship between adults and children in a cultured society. The difference in this endeavor is that those who are dominated are children and are especially vulnerable due to their inherent powerlessness in an adult society. What distinguishes children from adults is that their capacities are evolving and so would require greater care and protection. It is in the ambience of non-violence and respect that they fully develop to becoming confident individuals in their own right. They need tremendous support of the adults to be heard. They are entirely dependent on adults and thus in no position to

charter any independent path without adult support. The answer to the violence on children is adults and not resistance of children.

This is indeed a challenge. The world of adults must acquire the unique capabilities to pay special attention to have children's opinions heard and respect the dignity and rights of every child in every circumstance. Children are as human and sensitive as adults are, if not more. They need to be secure with a caring atmosphere and this is an adult responsibility. Practicing non-violence as a highest form of culture begins with seeing children as children. It is necessary for adults to behave with them in a manner that they are not subject to violence and hurt of any kind. In a way fostering such a culture will develop adults as responsible adults who would in turn be vigilant and question those that are breaking the norms of respecting childhood. In so doing inculcate the values of non-violence in children; adults cannot preach non-violence when perpetrating violence.

What is required therefore is to build skills of all in the society, cutting across regions, cultures, classes, officials, school teachers, care givers and adults at large to engage with children as equals, listen to them and address their concerns in a manner that does not hurt or humiliate them.

¹ In making it mandatory for the State to 'ensure compulsory admission, attendance, and completion of elementary education by every child of 6-14 years by implication, the State is violating the law if any child is out of school, or is a school dropout'. The right to education Act spells out in detail norms and standards of a school, which include all weather building consisting of at least one class room for every teacher; barrier free access; separate toilets for boys and girls; safe drinking water; kitchen where mid-day meal is cooked in school; playground; and boundary wall/fencing. The Act mandates a huge task that involves recruitment of 15 lakh teachers and provision for teachers training as well as teacher educators. It also spells out a child friendly pedagogy. More important there the RTE Act appreciates the difficulties faced by the first generation learners, in coping with the school system and thus makes it mandatory that no child is denied admission or driven out of school for want of birth certificates, transfer certificates nor can they be held back in any class till the completion of elementary school education. In order that older children and school dropouts catch up with their peers, it is the obligation of the State to admit a child to an age appropriate class and receive special training to be on par with others. This means that the RTE Act addresses the huge backlog of children who have been left out of the formal schools. The Act clearly provides that 'no child shall be subjected to physical punishment or mental harassment'.

As a first step towards equity and bridging the gaps in the social and cultural hierarchies the right to education act makes it mandatory that all private schools provide for 25% of its admission to poor students.

² In the last couple of months alone, there have been numerous news items of acts of violence on children by school teachers. In Mahboobnagar (Andhra Pradesh), a village school teacher brandished six year old boys and girls with firewood for not

standing in a line for mid day meals. A teacher in Jhunjhun, Rajasthan beat up an eight year girl so badly for not doing her homework that she lost her eye. A class IV student of a private school in Bangalore had his front teeth partially broken when the class teacher hurled a wooden duster at him for smiling in the class. A Class II student in a government school in Delhi died of a heat stroke after she was made to squat in the sun with bricks on her back. Two Class III children of a private school in, Kadapa, Andhra Pradesh, found speaking in Telugu were forced to wear a slate around their neck, declaring 'I will never speak in Telugu'. A Class VII student of a private school in Mumbai, were made to sit outside the principal's office on the floor facing a toilet for over six hours, for two successive days because her hands had mehendi designs that she and her friends had done for Id. A class 6 student in Guwahati, was tortured to death by two teachers for not completing his homework. In Kolkata, a class VIII boy was caned and punished repeatedly and he committed suicide. In Uttar Pradesh, a girl of class VIII who was also from the scheduled caste community was punished and asked to clean latrines. Unable to bear the insult and caste discrimination she too committed suicide.

³ Clause 17

⁴ http://www.ncpcr.gov.in/Guidelines/Guidelines_on_Corporal_Punishment_to_Chief_Secretaries.pdf

⁵ A four year old boy was repeatedly abused by the bus driver and conductor on his way back home but his parents dithered from making a police complaint. A two year old girl was molested and the poor family incurred over Rs. 80,000 for expenses which were met by the Tata Hospital on recommendation of the Commission, and a year later the child needed another surgery and there is a petition for waiver of charges. An eight year old has her uterus removed for being raped. The girl insists that the police takes action against him, she is willing to identify the offender who is absconding and wants justice be done to her. A 13 year old girl was gang raped by Railway Police Force while she had just got down the train. These are some of the complaints that the Commission has received of late. Three siblings were raped, drugged and molested for 18 months continuously by the school bus driver and two other juvenile offenders from the same school.