

# CHILD PROTECTION IN INDIA

(A reference book for Child Rights Activists)





## Shared views

**Resource Centre for Participatory Development Studies – RCPDS** along with **Kindernothilfe**, Germany and its partners in India as well its position as partner to Childline India Foundation, have diverse and rich experiences in promoting Child Rights in India. Child Rights Program approach and mainstreaming the same across every individual line department concerned is central to our work. The overall interest is to achieve greater benefits to children including participation of children themselves. Many child rights players are in grave darkness and face severe difficulties using the legal system. Therefore, special efforts are made in this primer to contextualise Child Rights on top of cards.

This book is just a primer (Not all) that provides a basic introduction to Child Rights and the constitutional safeguards for Child Rights Activists. The content presented in this book has been taken from different official sources, publication of Ministry of Women and Child Welfare, Gol, earlier work of IRDWSI, Odisha and personal experiences gathered while conducting many child rights workshops and training programmes across various stakeholders concerned with Child Rights delivery. The contributions made by Prof. Dr. Kannan, Board member of RCPDS, Arunodayam Erskine, Director of SPEECH, Mr Sathish Samuel, Country Co-ordinator of Kindernothilfe, Germany, Mrs Porkodi Devavaram, Newton Ponnammuthan, Mr Palanikumar, Mr J.S. Nirmal Raja and Mr Murugan is much appreciated in bringing out this handbook and is acknowledged. We hope it will be useful in empowering the stakeholders and ensure Child Rights Protection in India.

In India, liberal constitutional provisions exist for the survival, protection, development and welfare of children. There are a wide range of laws that guarantee children their rights and entitlements. India had been party to many International Treaties and Conventions that are pro child rights protection. As part of the various Five Year Plans, numerous programmes have been launched by the Government aimed at providing services to children in the areas of health, nutrition and education. The Government of India has recently adopted a National Policy for Children-2013, which recognizes every person below the age of eighteen years as a child and that childhood is an integral part of life with a value of its own, and a long term, sustainable, multi-sectoral, integrated and inclusive approach is necessary for the harmonious development and protection of children. The policy lays down the guiding principles that must be respected by national, state and local governments in their actions and initiatives affecting children. Some of the key guiding principles are: the right of every child to life, survival, development, education, protection and participation; equal rights for all children without discrimination; the best interest of the child as a primary concern in all actions and decisions affecting children; and family environment as the most conducive for all-round development of children.

Though several new plans schemes and programmes have been initiated to address issues concerning children, yet the plight of children across the country has not got better and continues to be precarious. The burning issues relating to children are the adverse child sex



ratio persistently high infant and child mortality ratios wide gender gaps in literacy escalating violence against children especially against the girl child and the rising incidents of female foeticide female infanticide and child marriage

The idea of this primer emerged out of many calls we receive from various child rights players in mainstream system, being the Nodal organisation for 24 x 7 child protection services through Childline for Virudunagar, on issues how to respond with birth certificates in case of child marriage, roles of revenue and medical personnel in cases of abuse, the labour department turned a blind eye at child labour issues, handling protection issues on various child rights related violations from legal perspectives, etc. Also there is a big gap identified across partners/players on the integrated view of the origin of Child Rights and its evolution as priority and commitment to Government of India.

This primer is planned in four sections to make it reader friendly and give a flow such as ... Background to Child Rights and commitment of India, Policies, key legal instruments and redressal mechanisms. Hope we all benefit from this reference book in the “Best interest of the Child”.

Dr John Devavaram  
CEO, RCPDS, Madurai.



## 1



## Introduction

India is home to the largest child population (approx 42% of the overall India population) in the world. The Constitution of India guarantees fundamental Rights to all children in the country and empowers the States to make special provisions and legal provisions at the National level for children. The directive State Policy specifically guide the States in protecting the children from all forms of abuse and ensuring that children are given opportunities and facilities to develop in a healthy manner in conditions of freedom and dignity. The Nation as well the States are responsible for ensuring that childhood is protected from exploitation and moral material abandonment.

Declaring its children as the Nation's "supremely important asset" in the National Policy for children 1974, the Government of India reiterated its commitment to secure the rights of its children by ratifying related International Conventions and Treaties. These include the Declaration of the Rights of the Child, Universal Declaration of Human Rights and its Covenants, the Convention on the Rights of the Child and its two optional protocols, UN conventions on the Rights of persons with disabilities, the protocol to prevent, surpass and punish Trafficking women and children, etc.

The National Policy for children, 1974 recognised that programs for children should find prominent place in National plans for the development of human resources, so that children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations provided in the society. Further National Charter for children 2003 which was adopted on 09 February 2004 underlined the intent to secure for every child its inherent right to be a child and enjoy a health and happy childhood.

To affirm the Government's commitment to the Rights based Approach in addressing the continuing and emerging challenges in the situation of children, the Government of India adopted the Resolutions on the National Policy for Children 2013.

### Child Rights in India

Internationally the need for special safeguard for the child had been stated in the Geneva Declaration, 1924. India is party to the Declaration of the Rights of the Child was adopted by the General Assembly on 20 Nov, 1959. Accordingly India adopted a National policy for children in 1974. The policy reaffirmed the constitutional provisions for adequate services to children, both before and after the birth and through the period of growth to ensure their full physical, mental and social development. It also evolved appropriate monitoring procedures to assess progress in implementing the Convention – involving various stakeholders in social system.

Subsequently in 1989, the world leaders recognized that Children should also have human rights and for that they need a special convention, i.e., a universally agreed set of non-negotiable standard and obligation. The Convention on the Rights of the Child (UNCRC - 20, November 1989) is the first legally binding international instrument to incorporate the full range of human rights—civil, cultural, economic, political and social rights within child rights for which India became party in 1992 by signing the agreement.

In pursuance of the commitment made at the World Summit, the Department of Women and Child Development under the Ministry of Human Resource Development has formulated National Action Plan for children. Most of the recommendations of the World Summit Action Plan are reflected in India's National Action Plan – keeping in mind the needs, Rights and aspirations of 350 million children in the country.

The priority areas in the Plan are health, nutrition, education, water, sanitation, environment and Participation. The plan gives special emphasis to children in difficult circumstances and aims at providing a framework, for actualisation of the objectives of the Convention in the Indian context.

**Constitutional Guarantees that are meant specifically that are meant for children include....**

- ❖ Right to free and compulsory elementary education for all children between the age group 6-14 years. (Article 21A)
- ❖ Right to be protected from any hazardous employment till the age of 14 years (Article 24)
- ❖ Right to be protected from all forms of abuse and violence and are protected against exploitation and moral abandonment (Article 39).
- ❖ Right to be protected from being abused and forced by economic necessity to enter occupation unsuited to their age or strength [Article 39(e)]
- ❖ Right to equal opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and guaranteed protection of childhood and youth against exploitation and against moral and material abandonment [Article 39(f)]
- ❖ Right to early childhood care and education to all children until they complete the age of six years (Article 45)

**Besides, Children also have Rights as equal citizens of India, just as any other adult male or female...**

- ❖ Right to Equality (Article 14);
- ❖ Right against Discrimination (Article 15);
- ❖ Right to Personal Liberty and Due Process of Law (Article 21)
- ❖ Right to being protected from being trafficked and forced into bonded labour (Article 23);
- ❖ Right to minorities for protection of their interests (Article 29)
- ❖ Right of Weaker Sections of People to be protected from Social Injustice and all forms of exploitations (Article 46);
- ❖ Right to nutrition and standard of living and improved public health (Article 47)

## United Nations Convention on Rights of the Child (UNCRC)

The United Nations Convention on the Rights of the Child (UNCRC) is a comprehensive, Internationally binding agreement on the Rights of children, adopted by the UN General Assembly in 1989. A child is defined as a person under the age of 18 years.

It incorporates children's:

- Civil and Political Rights
- Social, Economic and Cultural Rights
- Protection Rights

The UNCRC acknowledges the family as the fundamental unit of society and the natural environment for the growth and well-being of children. The Preamble also states that the family should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community. In UNCRC Articles 1 – 41 details a different type of Rights which may be classified under the following themes.

1. Survival Rights : include the child's Right to life and the needs that are most basic to existence, such as nutrition, shelter, an adequate living standard, and access to medical services.
2. Developmental Rights: include the Right to Education, play, leisure, cultural activities, access to information, skill up gradation, learning opportunities for life skills, freedom of thought, conscience and religion.
3. Protection Rights: ensure children are safe guarded against all forms of abuse, neglect and exploitation, including special care for refugee children,; safeguards for children in the criminal justice system, children in conflict with law, protection of children from employment; protection and rehabilitation of children who have suffered exploitation or abuse of any kind.
4. Participatory Rights: encompass children's freedom to express opinion to have a say in matters affecting their own lives, to join associations and to assemble peacefully. As their abilities develop, children are to have increasing opportunities to participate in the activities of their society, in preparation for responsible adulthood and citizenship.

***Note: The survival Rights and Development Rights include Ecological Rights of children which should be read carefully in between the lines given the climate change and its impact on human race, especially on children future. To spell it out clearly initiatives are already on cards through various children Movements like the one in India called, 'Children Movement for Climate Justice' which promote action around Mitigation, Adaptation and Lobby and advocacy to influence policy framework. This is inclusive of participatory rights of children with future perspective.***

### General Principles

Within the NCRC, four articles are afforded special emphasis, as they are basic to the implementation of all other Rights. These four articles are often referred to as "General Principles".

These are:

- ✦ that all the rights guaranteed by the UNCRC must be available to all children without discrimination of any form or kind (Article 2)
- ✦ that the Best interests of the child must be the primary consideration in all actions concerning children (Article 3)
- ✦ that every child has the rights to life, survival and development (Article 6); and
- ✦ that the child's view must be considered and taken into account in all matters affecting him or her (Article 12)

### **Status of Children in India**

UNICEF (2014) report of the State of World's Children in numbers, speaking about India, states that, though India has made definite progress as compared against the 2005 status, still there millions of Indian children are equally deprived of their rights to survival, health, nutrition, education and safe drinking water mainly from rural areas. It is reported that India ranks 49 with 56 per 1000 in under 5 mortality cases while IMR is at 44 per 1000 and neonatal with 31. It is alarming to see 1414 thousands under 5 deaths in the country.

It further states that 28% children are born under weight of which 43% with moderate and severe malnourishment whereas 16% with severe malnourishment. Only 24% in the rural areas have access to proper sanitation facilities and Government managed to cover only 26% diarrhea cases are able to be treated. It is alarming to see mother to child HIV/AIDS transmission count is 750 thousands while overall people living with HIV is marked at 2100 thousands. Girl children are the worst victims as they are often neglected and are discriminated against because of the preference for a boy child.

Given the heed of India to place her children in utmost care and protection and the constant efforts made by the country with various National level policies and legal measures and development intervention there is still huge gap in-terms of viewing children as Right Holders. This calls for strategic and sound intervention from all stakeholders concerned with Child Rights and Child Protection. The following sections of this Primer will speak of various National policies and specific Acts related to Child Development, Protection and Participation.

# 2

## The National Early Childhood Care And Education (ECCE) Policy 2012

The National Early Childhood Care and Education (ECCE) policy reaffirms the commitment of the Government of India to provide integrated services for holistic development of all children, along the continuum, from the pre natal period to six years of age. The policy lays down the way forward for a comprehensive approach towards ensuring a sound foundation, with focus on early learning, for every Indian child.

### 1. Preamble

- 1.1 Early Childhood refers to the first six years of life. This is acknowledged as the most crucial period, when the rate of development is very high and foundations are laid for cumulative lifelong learning and human development. There is growing scientific evidence that the development of the brain in the early years is a pathway that affects physical and mental health, learning and behavior throughout the life cycle.
- 1.2 India has 158.7 million children in the 0-6 years of age group (census 2011)
- 1.3 Early childhood care and education (ECCE) is an indispensable foundation for lifelong learning and development, and has critical impact on success at the primary stage of education. It therefore becomes imperative to accord priority attention to ECCE and invest adequately by providing commensurate resources.

### 2. The context

#### 2.1 Social Context

India has a tradition of valuing the early years of a child's life, and a rich heritage of practices for stimulating development and inculcating basic values and social skills in children. In the past this was transmitted primarily within families, through traditional child care practices which were commonly shared and passed on from one generation to another. However, there have been changes in the family as well as social context in the last few decades. Besides, there is a globally emerging realization of the importance of the early years.

#### 2.2 Policy Context

- 2.2.1 The Government of India recognizes the significance of ECCE, which has been included as a constitutional provision through the amended Article 45 (The Constitution Act 2005) which directs that, "The State shall endeavour to provide ECCE for all children until they complete the age of six".
- 2.2.2 ECCE has received attention in the National Policy for Children (1974), consequent to which the Integrated Child Development Services (ICDS) was initiated on a pilot basis in 1975 with the objective of laying the foundation for holistic and integrated development of child and building capabilities of care givers.

The National Policy on Education (1986) considers ECCE to be a critical input for human development. The National Nutrition Policy (1993) has also recommended interventions for the child care and nutrition during early childhood. The National Health Policy (2002) and National Plan of Action for children (2005) have also been supportive policy initiatives for early childhood. The 11th five year plan has acknowledged the importance of Early Childhood Care and Education (ECCE) as the stage that lay the foundation for lifelong development and the realization of a child's full potential and directs that “all children be provided at least one year of preschool education in the age of 3 to 6 years”. In the 11th Plan period, ICDS program was also universalized to cover all fourteen lakh inhabitations in India.

2.2.3 The Right of Children to Free and Compulsory Education Act (RTE) which came into effect from April 2010 has also addressed ECCE under section 11 of the Act which states, “with a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate Government may make necessary arrangement for providing free pre-school education for such children”.

2.2.4 India is also a signatory to both the Convention on the Rights of the Child (UNCRC) 1989 and Education for All (EFA) 1990. The latter has posted ECCE as the very first goal to be achieved for Education For All, since Learning begins at birth. The Dakar Framework for Action 2000 and Moscow Framework for Action (2010) have reaffirmed the commitment to ECCE.

### 2.3 Program Context:

2.3.1 ECCE services are delivered through public, private and non-governmental channels. In the Public sector, ICDS is the world's largest program imparting ECCE. Prior to the universalization of ICDS and its subsequent expansion, uncovered areas were attempted to be covered by the pre-primary system within the ambit of the primary school system. Programs for universalisation of elementary education such as Serva Shiksha Abhiyan (SSA) and National Program for Education of Girls at Elementary Level (NPEGEL) have also supported setting up of ECE centres, attached to primary schools in certain districts of the country. In addition, the Rajiv Gandhi National Creche Scheme for Working Mothers offers care and education services for children below six years of age.

The private sector in an organized or unorganized form, with varied quality, is perhaps the second largest service provider of ECCE, and its outreach is steadily percolating even into the rural areas across the country. In the voluntary sector, there are smaller scale initiatives. These are largely supported by trusts, societies, religious groups or international funding agencies.

There is a need to harmonise the activities of all these service providers, in accordance with program mandates, standards and legislations.

2.3.2 Despite existence of multiple service provisions, there is no reliable data available about the actual number of children attending ECCE provisions and their breakup as

per delivery of services/type of services. Of the 158.7 million children in the below six years category (census 2011), about 75.7 million children i.e. 48 per cent are reported to be covered under the ICDS (MWCD, 2011). Broad estimations indicate that a significant number is also covered by the private sector, besides some limited coverage by the NGO sector for which we have no data.

- 2.3.3 The quality of non formal preschool/ECCE imparted through these multiple channels is uneven, and varies from a minimalist approach to a mushrooming of accelerated academic programs. This is largely an outcome of inadequate understanding of the concept of ECCE, its philosophy and importance among all stakeholders. This coupled with inadequate institutional capacity in the system and an absence of standards, regulatory norms and mechanisms as well as a lack of understanding of the basic premises of ECCE has aggravated the problem.

In the above context, there is a need to ensure ECCE for every child below six years across the country as a matter of government policy. This policy seeks to initiate reforms, measures and corrective actions.

### **3. The Policy**

**Definition of ECCE:** For the purpose of this policy and the actions here under, ECCE refers to programs and provisions for children from prenatal to six years of age, which cater to needs of a child in all domains i.e. physical, motor, language, cognitive, socio-emotional, and creative and aesthetic appreciation; and ensure synergy with health and nutrition aspects. This would cover developmental priorities for each sub-stage within the continuum, i.e. care, early stimulation/interaction needs for children below 3 years, and developmentally appropriate preschool education for 3 – 6 years old with a more structured and planned school readiness for 5 to 6 year olds.

This policy is thus applicable to all early childhood care and education programs/related services in public, private and voluntary sectors in all settings across regions, which are offered to children under 6 years. These services could go by the nomenclature of Anganwadies (AWC), crèches, play groups/schools, preschools, nursery schools, kindergartens, preparatory schools, balwadis, home based care, etc. and propose to cater to the needs of children from prenatal to six years.

### **4. Vision of the Policy**

The vision of the policy is to promote inclusive, equitable and contextualised opportunities for promoting optimal development and active learning capacity of all children below 6 years of age. It envisages improving pathways for a successful and smooth transition from care and education provided at home to centre based ECCE and thereafter to school – age provision by facilitating an enabling environment through appropriate systems, processes and provisions across the country.

In furtherance of the vision of the policy, the government shall be guided by the following objectives:

- a. Facilitating comprehensive childcare supports, infrastructure and services aimed at holistic well-being of children and responsive to their developmental needs.
- b. Ensure adaptive strategies for inclusion of all children

- c. Build human resource capacity of ECCE across sectors to enhance and develop quality services for children and their families
- d. Set out the quality, standards and curriculum framework for ECCE provisions and ensure their application and practice through advocacy and enforcement
- e. Raise awareness and understanding about the significance of ECCE and promote strong partnerships with communities and families in order to improve the quality of life of young children through institutional, programmatic and technological means.

## 5. The Spirit of the Policy

The cardinal principles informing this policy are universal access, equity and quality in ECCE and strengthening capacity. These are considered inter-dependent and complementary to each other and integral to the program of ECCE. There can be no access to ECCE, unless it is of an acceptable quality, affordable and is available to all.

### 5.1 Universal Access with inclusion

5.1.1 The policy seeks to universalise the provision of ECCE for all children mainly through ICDS in public sector and other service provision across systems.

5.1.2. Access would be through decentralized and contextualized approach, by expanding the current initiatives and also promoting and adopting innovative initiatives.

5.1.3 The ICDS Anganwadi Centre (AWC) would be repositioned as a "Vibrant child friendly ECD Centre" with adequate infrastructure and resources for ensuring a continuum of ECCE in a life – cycle approach and child related outcomes.

5.1.4 Conversion of AWCs into AWCs – cum – crèches with a planned early stimulation component and interactive environment for children below 3 years will be piloted.

5.1.5 Young children with different abilities would also be reached. Measures would require to be undertaken to ensure early detection and appropriate referrals with linkages for children at risk of developmental delays and disabilities.

5.1.6 Family based / Community based and NGO based ECCE service delivery model would be experimented and promoted.

5.1.7 An urban strategy would be developed adopted to address the specific unfulfilled needs of children in urban slums and to expand access to all urban settlements / slum etc. To facilitate this, rules pertaining to area / town planning may be amended in the 12th Five year Plan so as to provide space for neighbourhood AWCs.

5.1.8. To ensure universal access to integrated child development opportunities for all young children, the policy may support the option of ICDS complementing the private sector / voluntary sector programmes by extending its health and nutrition, counselling and other facilities to enable provision of holistic ECCE for all young children.

5.1.9 Linkage with primary school system will be streamlined to address the issue of continuum and smooth transition from ECCE to primary schooling through school readiness package.

5.2 To ensure Quality with Equity in ECCE developmentally appropriate practices will be promoted through a multi pronged approach.

5.2.1 To standardize the quality of ECCE available to children, basic Quality Standards and Specification will be laid down for ECCE which will be valid across public, private and voluntary sectors.

5.2.2. The current negative factors in all sectors with regard to ECCE will not be allowed to continue. A Regulatory Framework for ECCE to ensure basic quality inputs and outcomes, across all service providers / sectors undertaking such services, will be progressively developed / evolved at the national level and shall be implemented by states, with appropriate customization, in the next five years.

5.2.3. A developmentally appropriate National Curriculum Framework for ECCE will be developed. It will promote play based, experiential and child friendly provision for early education and all round development.

5.2.4. The mother tongue or home language of the child will be the primary language of interaction in the ECCE programmes. However, given the young child's ability at this age to learn many languages, exposure to the national / regional language and English in oral form as required, will also be explored.

5.2.5. The Government will Endeavour to provide child friendly and developmentally appropriate play and learning materials.

5.2.6. Programme evaluation would be explored by adopting consistent assessment criteria and methodologies.

5.2.7. Formative and continuous child assessment would also be explored in order to ensure that the ECCE programme is responsive to the developmental needs of the child.

5.2.8. ICT potential will be optimally harnessed to promote all aspects of ECCE and particularly for monitoring, evaluation, capacity building and training.

### 5.3. Strengthening Capacity

5.3.1 Establishment of new and strengthening of existing institution will be undertaken. Quality of ICDS and other related training institutes will also be upgraded.

5.3.2. Child Development Resource Centres will be established in NIPCCD Regional Centres with mandates for operating helpline; counselling centres; capacity development centres, assessment centres and advocacy hubs.

5.3.3. Mechanism will be established for professionalisation of the ECCE service providers. A comprehensive training strategy will be developed and complementarity will be ensured between pre – service, in – service and on – site professional support.

5.3.4. The policy recognizes that the young children are best cared for in their family environment and thus strengthening family capabilities to care and protect the child will receive the highest priority.

5.3.5. A sound system for data collection/generation and information management will be established across the country with the use of information technology which will allow for regular collection, compilation and analysis of the data on ECCE.

## 6. Monitoring and Supportive Supervision

- 6.1. Monitoring and supervision of ECCE programmes will be strengthened, based on a systematic Monitoring Framework with input, output and outcome indicators specified for ECCE quality, in tangible and measurable terms.
- 6.2. Consortiums of experienced NGOs, professionals and higher learning institution will be identified at regional levels and invited to support government efforts in monitoring and capacity building for ECCE.

## 7. Research, Evaluation and Documentation

Research will be promoted to generate indigenous knowledge and to ensure a more evidence based approach towards planning, implementation and monitoring of ECCE programmes and interventions. Impact evaluation will be made integral to all interventions and action research will be promoted for generating innovative models.

## 8. Advocacy

A major deterrent to ensuring the right kind of ECCE is the lack of understanding of developmentally appropriate ECCE among the parents and other stakeholders. In order to address this deficit, extensive use of media will be made, including folk, print and electronic media, to reach out to parents, caregivers, professional and the larger community and create awareness of the appropriate kind of ECC. Parent and community outreach programmes will be strengthened to establish collaborative care providing relationships.

## 9. Convergence and Coordination

The policy envisages that the independently stated policies, programmes and other such related instruments, having bearing on ECCE, be smoothly interacted with the current policy. Regulatory, operational and financial convergence between these related schemes and programmes will be encouraged and achieved over a period. To emphasise the important role of parents/ guardians, caregivers and for the long term sustainability of the appropriate early childhood care and education practices, a partnership approach between all stakeholders will be promoted and ensured. The institutional mechanism to ensure this would be the National and State ECCE Councils.

## 10. Institutional and Implementation Arrangement

- 10.1 The nodal Ministry for overseeing the ECCE programmes and service will be the MWCD along with its state level counterpart departments. All State Governments / UT Administrations would be advised to make ECCE a subject under Business Allocation Rules of Department of Women and Child Development as it has been made in Government of India under Ministry of Women and Child Development. Alternatively, there would be a clear delineation of formal elementary school system and non – formal, pre – school system.
10. 2. The policy envisages the envisage establishment of an ECCE Cell/ Division within MWCD as nodal agency for interface, both at National and State levels, for inter – sectoral coordination.

- 10.3 To sustain the multi – sectoral and inter – agency collaboration, a thematic ECCE Committee, with experts / advisors, jurists as members, would be formed under the ICDS Mission Steering Group initially and later formed as National ECCE Council, with corresponding councils at State and later at District level. The Council would be the apex body to guide and oversee the implementation of the National ECCE Policy as well as advise and guide ECCE programs, consistent with the National ECCE Policy/legislation etc.
- 10.4 Given that currently a significant number of 5 to 6 year olds are in primary schools in many States, and RTE's mandate being provision of free and compulsory elementary education from six years onwards, convergence with MHRD and State Departments of Education will be of key importance, particularly to adopt joyful learning approaches and extend the school readiness intervention for children of 5 plus years of age. Mechanisms will be instituted to facilitate this convergence so as to ensure continuity and inter – linkage, more so in the light of Section 11 of RTE.
- 10.5 Focus will be on decentralization. Provision will therefore be made for committees at the community, block, district, state and national levels, Parents, community members, District Assemblies, Regional Coordination Councils, NGOs, Development Partners and the Government will be actively involved.
- 10.6 The district level administrative units and the panchayats will be strengthened to provide for more decentralised planning and implementation of ECCE programmes. Community based organization such as Village Education Committees, Parents Committees, Village Resource Groups, PRIs will be directly involved and their capacities strengthened, to oversee the management of the ECCE centres across sectors.
- 10.7 The programme of action for implementing and completing the National ECCE Policy, National Early Childhood Education Curriculum and Quality Standards for ECCE will be reflected in the National State Plan of Actions in SSA, ICDS, AIPs, Creche Programme and any other similarly situated programme of National / State / local bodies including PRIs.
- 10.8 The implementation strategy shall include creating an enabling environment for providing integrated services.
- 10.9 The policy also intends to develop a legal framework conducive to the implementation of the National Policy on ECCE assuring the right of the child to holistic ECCE in the long run, after assessment of its being operationalised, and its subsequent plan.

## **11. Increased Investment towards Early Childhood Care and Education**

Evidence indicates highest rate of return on investments made in early years. The policy seeks to increase the aggregate spending on quality ECCE interventions through enhanced public spending on ECCE and through Public Private Partnership (PPP) mode. Finance will be provided in a commensurate manner to meet the demands arising from the above initiatives, Early childhood (0-6 years) and ECCE budgeting would serve as an important dimension to

asses investment in early years, The exercise of segregated child budgeting for childhood may be carried out regularly so as to table stock of investments for children and to identify gaps in resource investment and utilization. This would also asses child related outcomes.

## **12. Review**

The implementation of the new policy will be reviewed every five years. Periodic appraisals will also be made to assess progress of implementation and make mid – course corrections, if and when required.

# 3

## The National Policy for Children, 2013

The Policy reaffirms the government's commitment to the realisation of the rights of all children in the country. It recognizes every person below the age of eighteen years as a child and that childhood is an integral part of life with a value of its own, and a long term, sustainable, multi-sectoral, integrated and inclusive approach is necessary for the harmonious development and protection of children.

The policy lays down the guiding principles that must be respected by national, state and local governments in their actions and initiatives affecting children. Some of the key guiding principles are: the right of every child to life, survival, development, education, protection and participation; equal rights for all children without discrimination; the best interest of the child as a primary concern in all actions and decisions affecting children; and family environment as the most conducive for all-round development of children. The policy has identified survival, health, nutrition, education, development, protection and participation as the undeniable rights of every child, and has also declared these as key priority areas.

As children's needs are multi-sectoral, interconnected and require collective action, the policy aims at purposeful convergence and strong coordination across different sectors and levels of governance; active engagement and partnerships with all stakeholders; setting up of a comprehensive and reliable knowledge base; provision of adequate resources; and sensitization and capacity development of all those who work for and with children.

A National Plan of Action will be developed to give effect to the policy and a National Coordination and Action Group (NCAG) will be constituted to monitor the progress of implementation. Similar plans and coordination and action groups will be constituted at the state and district levels. The National Commission for Protection of Child Rights and State Commissions for Protection of Child Rights are to ensure that the principles of the policy are respected in all sectors at all levels. There is a provision for review of the policy every five years. The Ministry of Women and Child Development will be the nodal ministry for overseeing and coordinating the implementation of the policy and will lead the review process.

Recognizing childhood is an integral part of life with a value of its own and important national asset, the government of India has taken up a National Policy to promote and safeguard the right of all the children to live and grow with equity, dignity, security and freedom. The policy ensures that all the children have equal opportunities that no custom, tradition, cultural or religion practices is allowed to violate or restrict or prevent children from enjoying their rights. This Policy is to guide and inform all laws, policies, plans and programmes affecting children. All actions and initiatives of the national, state and local government in all sectors must respect and uphold the principles and provisions of this Policy.

## Guiding Principles

- (i) every child has universal, inalienable and indivisible human rights
- (ii) the rights of children are interrelated and interdependent, all are equally important and fundamental to the well-being and dignity of the child
- (iii) every child has the right to life, survival, development, education, protection and participation
- (iv) right to life, survival and development goes beyond the physical existence of the child and also encompasses the right to identity and nationality
- (v) mental, emotional, cognitive, social and cultural development of the child is to be addressed in totality
- (vi) all the children have equal rights and no child shall be discriminated against on grounds of religion, race, caste, sex, place of birth, class, language, and disability, social, economic or any other status
- (vii) the best interest of the child is a primary concern in all decisions and actions affecting the child, whether taken by legislative bodies, courts of law, administrative authorities, public, private, social, religious or cultural institutions
- (viii) family or family environment is most conducive for the all-round development of children and they are not to be separated from their parents, except where such separation is necessary in their best interest;
- (ix) every child has the right to a dignified life, free from exploitation
- (x) safety and security of all children is integral to their well-being and children are to be protected from all forms of harm, abuse, neglect, violence, maltreatment and exploitation in all settings including care institutions, schools, hospitals, crèches, families and communities
- (xi) children are capable of forming views and must be provided a conducive environment and the opportunity to express their views in any way they are able to communicate, in matters affecting them
- (xii) children's views, especially those of girls, children from disadvantaged groups and marginalised communities, are to be heard in all matters affecting them, in particular judicial and administrative proceedings and interactions, and their views given due consideration in accordance with their age, maturity and evolving capacities

The policy prioritizes on survival, health, nutrition, development, education, protection and participation of every child .

### Survival, Health and Nutrition

The right to life, survival, health and nutrition is an inalienable right of every child and will receive the highest priority.

The State stands committed to ensure equitable access to comprehensive, and essential, preventive, promotive, curative and rehabilitative health care for all children before, during and

after birth, and throughout the period of their growth and development.

Every child has a right to adequate nutrition and to be safeguarded against hunger, deprivation and malnutrition.

***The State shall take all necessary measures to:***

- (i) Improve maternal health care, including antenatal care, safe delivery by skilled health personnel, post natal care and nutritional support
- (ii) Provide universal access to information and services for making informed choices related to birth and spacing of children
- (iii) Secure the right of the girl child to life, survival, health and nutrition
- (iv) Address key causes and determinants of child mortality through interventions based on continuum of care, with emphasis on nutrition, safe drinking water sanitation and health education
- (v) Encourage focused behaviour change communication efforts to improve new born and childcare practices at the household and community level
- (vi) Provide universal and affordable access to services for prevention, treatment, care and management of neo-natal and childhood illnesses and protect children from all water borne, vector borne, blood borne, communicable and other childhood diseases
- (vii) Prevent disabilities, both mental and physical, through timely measures for pre-natal, peri-natal and post-natal health and nutrition care of mother and child, provide services for early detection, treatment and management, including interventions to minimise and prevent further disabilities, prevent discrimination faced by children with disabilities (mental and physical), and provide services for rehabilitation and social support
- (viii) Ensure availability of essential services, supports and provisions for nutritive attainment in a life cycle approach, including infant and young child feeding (IYCF) practices, special focus on adolescent girls and other vulnerable groups, and special measures for the health, care and nutrition, including nutrition education, of expectant and nursing mothers
- (ix) Provide adolescents access to information, support and services essential for their health and development, including information and support on appropriate life style and healthy choices and awareness on the ill effects of alcohol and substance abuse
- (x) Prevent HIV infections at birth and ensure infected children receive medical treatment, adequate nutrition and after-care, and are not discriminated against in accessing their rights
- (xi) Ensure that only child safe products and services are available in the country and put in place mechanisms to enforce safety standards for products and services designed for children
- (xii) Provide adequate safeguards and measures against false claims relating to growth, development and nutrition

## Education and Development

Every child has equal right to learning, knowledge and education. The State recognises its responsibility to secure this right for every child, with due regard for special needs, through access, provision and promotion of required environment, information, infrastructure, services and supports, towards the development of the child's fullest potential.

### ***The State shall take all necessary measures to:***

- (i) Provide universal and equitable access to quality Early Childhood Care and Education (ECCE) for optimal development and active learning capacity of all children below six years of age
- (ii) Ensure that every child in the age group of 6-14 years is in school and enjoys the fundamental right to education as enshrined in the Constitution
- (iii) Promote affordable and accessible quality education up to the secondary level for all children
- (iv) Foster and support inter sectoral networks and linkages to provide vocational training options including comprehensively addressing age specific and gender-specific issues of childrens' career choices through career counseling and vocational guidance
- (v) Ensure that all out of school children such as child labourers, migrant children, trafficked children, children of migrant labour, street children, child victims of alcohol and substance abuse, children in areas of civil unrest, orphans, children with disability (mental and physical), children with chronic ailments, married children, children of manual scavengers, children of sex workers, children of prisoners, etc. are tracked, rescued, rehabilitated and have access to their right to education
- (vi) Address discrimination of all forms in schools and foster equal opportunity, treatment and participation irrespective of place of birth,sex, religion, disability, language, region, caste, health, social,economic or any other status
- (vii) Prioritise education for disadvantaged groups by creating enabling environment through necessary legislative measures, policy and provisions
- (viii) Ensure physical safety of the child and provide safe and secure learning environment
- (ix) Ensure that all processes of teaching and learning are child friendly
- (x) Ensure formulation and practice of pedagogy that engages and delights children, with a special focus on mental health, from a social and gender just, life skills and age appropriate perspective
- (xi) Provide access to ICT tools for equitable, inclusive and affordable education for all children especially in remote, tribal and hard to reach areas
- (xii) Promote safe and enjoyable engagement of children's experiences with new technology in accordance with their age and level of maturity, even as there is respect for their own culture and roots

- (xiii) Review, develop and sustain age-specific initiatives, services and programmes for safe spaces for play, sports, recreation, leisure, cultural and scientific activities for children in neighbourhoods, schools and other institutions
- (xiv) Enable children to develop holistically, bringing out their aspirations, with focus on their strengths, empowering them to take control of their lives, bodies and behaviours
- (xv) Ensure no child is subjected to any physical punishment or mental harassment. Promote positive engagement to impart discipline so as to provide children with a good learning experience
- (xvi) Ensure that children's health is regularly monitored through the school health programme and arrangements are made for health and emergency care of children
- (xvii) Provide services to children with special needs in regular schools and ensure that these are inclusive and have all facilities such as trained teachers and special educators, appropriate pedagogy and education material, barrier-free access for mobility, functional toilets and co-curricular activities towards the development of child's fullest potential and autonomy and sense of dignity and self worth.
- (xviii) Promote engagement of families and communities with schools for all round development of children, with emphasis on good health, hygiene and sanitation practices, including sensitization on ill-effects of alcohol and substance abuse
- (xix) facilitate concerted efforts by local governments, non-governmental organisations/community based organisations to map gaps in availability of educational services, especially in backward, child labour intensive areas, areas of civil unrest, and in situations of emergency, and efforts for addressing them
- (xx) Identify, encourage and assist gifted children, particularly those belonging to the disadvantaged groups, through special programmes
- (xxi) Provide and promote crèche and day care facilities for children of working mothers, mothers belonging to poor families, ailing mothers and single parents
- (xxii) Promote appropriate baby feeding facilities in public places and at workplaces for working mothers in public, private and unorganized sector

### **Protection**

A safe, secure and protective environment is a precondition for the realization of all other rights of children. Children have the right to be protected wherever they are. The State shall create a caring, protective and safe environment for all children, to reduce their vulnerability in all situations and to keep them safe at all places, especially public spaces.

The State shall protect all children from all forms of violence and abuse, harm, neglect, stigma, discrimination, deprivation, exploitation including economic exploitation and sexual exploitation, abandonment, separation, abduction, sale or trafficking for any purpose or in any form, pornography, alcohol and substance abuse, or any other activity that takes undue advantage of them, or harms their personhood or affects their development.

To secure the rights of children temporarily or permanently deprived of parental care, the State shall endeavour to ensure family and community-based care arrangements including sponsorship, kinship, foster care and adoption, with institutionalisation as a measure of last resort, with due regard to the best interests of the child and guaranteeing quality standards of care and protection.

The State commits to taking special protection measures to secure the rights and entitlements of children in need of special protection, characterised by their specific social, economic and geo-political situations, including their need for rehabilitation and reintegration, in particular but not limited to, children affected by migration, displacement, communal or sectarian violence, civil unrest, disasters and calamities, street children, children of sex workers, children forced into commercial sexual exploitation, abused and exploited children, children forced into begging, children in conflict and contact with the law, children in situations of labour, children of prisoners, children infected/affected by HIV/AIDS, children with disabilities, children affected by alcohol and substance abuse, children of manual scavengers and children from any other socially excluded group, children affected by armed conflict and any other category of children requiring care and protection.

The State shall promote child friendly jurisprudence, enact progressive legislation, build a preventive and responsive child protection system, including emergency outreach services, and promote effective enforcement of punitive legislative and administrative measures against all forms of child abuse and neglect to comprehensively address issues related to child protection.

The State shall promote and strengthen legislative, administrative and institutional redressal mechanisms at the National and State level for the protection of child rights. For local grievances, effective and accessible grievance redressal mechanisms shall be developed at the programme level.

### **Participation**

The State has the primary responsibility to ensure that children are made aware of their rights, and provided with an enabling environment, opportunities and support to develop skills, to form aspirations and express their views in accordance with their age, level of maturity and evolving capacities, so as to enable them to be actively involved in their own development and in all matters concerning and affecting them.

The State shall promote and strengthen respect for the views of the child, especially those of the girl child, children with disabilities and of children from minority groups or marginalised communities, within the family; community; schools and institutions; different levels of governance; as well as in judicial and administrative proceedings that concern them.

The State shall engage all stakeholders in developing mechanisms for children to share their grievances without fear in all settings; monitor effective implementation of children's participation through monitorable indicators; develop different models of child participation; and undertake research and documentation of best practices.

## **Advocacy and Partnerships**

The State shall encourage the active involvement, participation and collective action of stakeholders such as individuals, families, local communities, nongovernmental organisations, civil society organisations, media and private sector including government in securing the rights of the child.

The State shall make planned, coordinated and concerted efforts to raise public awareness on child rights and entitlements amongst the parents and caregivers/guardians as well as functionaries and duty bearers. All stakeholders are to promote the use of rights-based and equity-focused strategies, platforms, programmes, communications and other tools to generate awareness on child rights and the commitment to their achievement.

This Policy is to be given wide publicity and supported by focused advocacy measures to ensure that children's best interests and rights are accorded the highest priority in areas of policy, planning, resource allocation, governance, monitoring and evaluation, and children's voices and views are heard in all matters and actions which impact their lives.

The State shall ensure that service delivery and justice delivery mechanisms and structures are participatory, responsive and child-sensitive, thereby enhancing transparency and ensuring public accountability. Synergistic linkages will be created with other progressive and successful experiments to learn from best practices across regions.

## **Coordination, Action and Monitoring**

Addressing the rights and needs of children requires programming across different sectors and integrating their impact on the child in a synergistic way. Rights based approach to survival, development and protection calls for conscious, convergent and collateral linkages among different sectors and settings, with indicators for tracking progress.

Community and local governance play a significant role in ensuring the child's optimum development and social integration. Ensuring coordination among Central Government Ministries/Departments, between Central and State Governments, between different levels of governance and between government and civil society is crucial for effective implementation of this Policy.

The Ministry of Women and Child Development (MWCD) will be the nodal Ministry for overseeing and coordinating the implementation of this Policy. A National Coordination and Action Group (NCAG) for Children under the Minister in charge of the Ministry of Women and Child Development will monitor the progress with other concerned Ministries as its members. Similar Coordination and Actions Groups will be formed at the State and District level.

The Ministry of Women and Child Development, in consultation with all related Ministries and Departments, will formulate a National Plan of Action for Children. Similar Plans at the State, District and local level will be formulated to ensure action on the provisions of this Policy. The National, State and District Coordination and Action Groups will monitor the progress of implementation under these Plans.

The National Commission for Protection of Child Rights and State Commissions for Protection of Child Rights will ensure that the principles of this Policy are respected in all sectors at all levels in formulating laws, policies and programmes affecting children.

### **Research, Documentation and Capacity Building**

The implementation of this Policy will be supported by a comprehensive and reliable knowledge base on all aspects of the status and condition of children. Establishing such a knowledge base would be enabled through child focused research and documentation, both quantitative as well as qualitative. A continuous process of indicator-based child impact assessment and evaluation will be developed, and assessment and evaluation will be carried out on the situation of children in the country, which will inform policies and programmes for children.

Professional and technical competence and capability in all aspects of programming, managing, working and caring for children at all levels in all sectors will be ensured through appropriate selection and well planned capacity development initiatives. All duty bearers working with children will be sensitised and oriented on child rights and held accountable for their acts of omission and commission.

### **Resource Allocation**

The State commits to allocate the required financial, material and human resources, and their efficient and effective use, with transparency and accountability, to implement this Policy.

Child budgeting will track allocation and utilisation of resources and their impact on outcomes for children with regard to budgets and expenditures on children by all related Ministries and Departments.

### **Review of Policy**

A comprehensive review of this Policy will be taken up once in five years in consultation with all stakeholders, including children. The Ministry of Women and Child Development will lead the review process.

## 4

## Child Labour (Prohibition & Regulation) Act 1986

**C**hild Labour (Prohibition & Regulation) Act, 1986 was the culmination of effort and ideas that emerged from the deliberations and recommendations of various committees on child labour. There had been series of deliberations before the Act was introduced. Based on the Constitutional provisions and the Directive Principles of State Policy, a number of legislations have been enacted from time to time. The following is the list of such legislations, which aim at elimination of child labour from hazardous industries and regulation of their conditions of employment in other non-hazardous occupations.

- Factories Act, 1948
- Plantation Labour Act, 1951
- Merchant Shipping Act, 1951
- Mines Act, 1952
- Motor Transport Workers Act, 1961
- Apprenticeship Act, 1961
- Beedi and Cigar Workers (Conditions of Employment) Act, 1966
- The Bonded Labour System (Abolition) Act, 1976
- Child Labour (Prohibition and Regulation) Act, 1986

Children are engaged in various forms as Child Labour in both unorganized and informal sectors, which do not come within the purview of the law. They go as migrant labourers migrating from rural to urban area (accompanying migrant parents or otherwise). Sometimes they go as bonded labourer pledged by the parent or guardian to the employer in lieu of debts or payments.

There are many factors that contribute to the phenomenon of Child Labour and makes it continue in the long run. These may be broadly classified under four major categories such as mindsets of parents/caretakers, employers, children themselves and of the civil society.

### **Mindset of parents/caretakers**

Parents are generally known to view education as promise for a job.

They think and believe that a few hours at the work place are preferable to spending years in the school where the curriculum, course content and textual materials are not attuned to the day-to-day needs of life and where the teaching-learning process is dull, unattractive, uninteresting and irrelevant.

They think and believe that children can substantially contribute to the process of a incremental income generation for a poor family with a low income.

They advocate child labour on the ground of transfer of intergenerational skills.

They harbour an apprehension that educated and unemployed children would simply be a liability for them.

### **Mindset of employers:**

Employers regard every working child as a labourer who works for low wages, is easily pliable, does not drag the employer into trade disputes, has nimble fingers and, therefore, is more productive than an adult worker.

They discourage education of children on the following grounds:

children once educated would start asserting their rights;

they would refuse to submit to authority;

education of the unlettered masses would lead to deterioration of labour relations; it would usurp the system of easy supply of child labour.

Perception of the working children themselves:

They look upon their jobs as training for skills.

They also look upon their jobs as an experience for getting better jobs at higher wages.

They feel that educational curriculum is not job oriented; it does not help in having prospects of good remunerative employment.

Schooling for children implies dependence on the family for 5 to 7 years. Many children abhor this dependence. They regard their employment as a means to help and support younger siblings.

### **Perception of the Civil Society:**

The civil society is by and large indifferent to the issue of elimination of child labour.

A segment of the civil society believes that child labour per se is not bad; what is objectionable is exploitative child labour. They by and large tolerate child labour in simple, harmless and innocuous occupations.

They advocate prohibition of child labour only in hazardous occupations and processes while preferring to regulate employment of children in the rest.

They fail to perceive the vital link between elimination of child labour and right of all children in 6-14 age group to free and compulsory education. Thus if we take a balance sheet of the gains and losses of a child being a labour from child rights perspective it will appear as follows...

What do they gain	;	Nil
What do they lose	:	<ul style="list-style-type: none"> <li>- educational deprivation;</li> <li>- loss of childhood;</li> <li>- Sexual abuse and life taurment</li> <li>- early ageing;</li> <li>- stunted growth;</li> <li>- fatigue;</li> <li>- loss of productive energy;</li> <li>- low longevity;</li> <li>- loss of eye sight, hearing and sensory nerves</li> </ul>

Given all the above background, the basic objective of the Child Labour (Prohibition & Regulation) Act 1986, is to ban employment of children below the age of 14 years in factories, mines and hazardous employment's and to regulate the working conditions of children in other employments

The Act bans the employment of children, i.e. those who have not completed their 14th year, in specified occupations and process;

- Lays down a procedure to make additions to the schedule of banned occupations or processes;
- Regulates the working conditions of children in occupations where they are not prohibited from working;
- Lays down penalties for employment of children in violation of the provisions of this Act, and these Acts which forbid the employment of children;
- Attempt to bring out uniformly in the definition of "Child" in related laws. However still there is conflict in the area of Juvenile Justice Act 2000 where the age of the child is stipulated to 0 to 18 years. But Labour act seeks its allie with RTE which talks about children getting Free and compulsory education till the age of 14.

The Act prohibits employment of children below 14 years of age in occupations and processes listed in Part A and B of the Schedule to the Act. Through a Notification dated 26.5.1993, the working conditions of children have been regulated in all employments, which are not prohibited under the Child Labour (Prohibition & Regulation) Act 1986. Through a Notification dated 27.1.1999 the Schedule has been modified by adding six more occupations and 33 processes, thereby bringing the total to 13 occupations and 51 processes respectively.

- Children employed in occupations and processes, not banned by the Act are regulated by the following provisions:

- A child shall not be required to work for more than six hours a day which shall be inclusive of his/her half an hour break.
- No child shall be permitted or required to work between 7 p.m and 8 a.m.
- No child shall be required or permitted to work over-time.
- Every child shall get a weekly off.

There is an obligation on the part of the employer to furnish information to the inspector regarding the employment of children. It is mandatory for the employer to maintain a register on this matter

The following occupations and processes that are prohibited under The Child Labour (Prohibition and Regulation) Act, 1986

### **OCCUPATIONS**

- 1) Transport of passengers, goods or mails by railways
- 2) Cinder picking, cleaning of an ash pit or building operation in the railway premises
- 3) Work in a catering establishment at a railway station, involving the movement of a vendor or any other employee of the establishment from one platform to another or into or out of a moving train
- 4) Work relating to the construction of a railway station or with any other work where such work is done in close proximity to or between the railway lines.
- 5) A part authority within the limits of any port
- 6) Work relating to selling of crackers and fireworks in shop with temporary licenses
- 7) Abattoirs / Slaughter Houses
- 8) Automobile workshops and garages
- 9) Foundries
- 10) Handling of toxic or inflammable substances or explosives
- 11) Handloom and power loom industry
- 12) Mines (underground and under water) and collieries;
- 13) Plastic units and fibreglass workshops

### **PROCESSES**

- 1) Beedi-making
- 2) Carpet-weaving including preparatory
- 3) Cement manufacture, including bagging of cement
- 4) Cloth printing dyeing and weaving including processes preparatory and incidental thereto

- 5) Manufacture of matches, explosives and fireworks
- 6) Mica-cutting and splitting
- 7) Shellac manufacture
- 8) Soap Manufacture
- 9) Tanning
- 10) Wool-cleaning
- 11) Building and construction industry
- 12) Manufacture of slate pencils including packing
- 13) Manufacture of products from agate
- 14) Processes using toxic metals and substance such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos
- 15) "Hazardous processes" as defined in Section 2 (c,d) and 'dangerous operations' as notified in rules made under Section 87 of the Factories Act 1948(63 of 1948)
- 16) Printing as defined in Section 2(k)(iv) of the Factories Act, 1948(63 of 1948)
- 17) Cashew and cashew nut descaling and processing
- 18) Soldering processes in electronic industries
- 19) 'Aggarbatti' manufacturing
- 20) Automobile repairs and maintenance including processes incidental thereto namely welding, lathe work, dent beating and painting
- 21) Brick kilns and Roof tiles units
- 22) Cotton ginning and processing and production of hosiery goods
- 23) Detergent manufacturing
- 24) Fabrication workshops (ferrous and non ferrous)
- 25) Gem cutting and polishing
- 26) Handling of chromite and manganese ores
- 27) Jute textile manufacture and coir making
- 28) Lime kilns and Manufacture and coir making
- 29) Lock Making
- 30) Manufacturing processes having exposure to lead such as primary and secondary smelting, welding and cutting of lead-painted metal constructions, welding of galvanized or zinc silicate, polyvinyl chloride, mixing(by hand) of crystal glass mass, sanding or scrapping of lead paint, burning of lead mining, plumbing cable making, wire

patenting lead casting type founding in printing shops. Store type setting, assembling of cars, shot making and lead glass blowing.

- 31) Manufacture of cement pipes, cement products and other related work
- 32) Manufacture of glass, glassware including bangles, florescent tubes, bulbs and other similar glass products
- 33) Manufacturing of dyes and dye stuff
- 34) Manufacturing or processing and handling of pesticides and insecticides
- 35) Manufacturing of processing and handling of corrosive and toxic substances, metal cleaning and photo engraving and soldering processes in the electronic industry
- 36) Manufacturing or burning coal and coal briquettes
- 37) Manufacturing of sports goods involving exposure to synthetic materials, chemicals and leather
- 38) Moulding and processing of fibre glass and plastic
- 39) Oil expelling and refinery
- 40) Paper making
- 41) Potteries and ceramic industry
- 42) Polishing, moulding, cutting, welding, manufacture of brass goods in all forms
- 43) Processing in agriculture where tractors, threshing and harvesting machines are used and chaff cutting
- 44) Saw mill-all processes
- 45) Sericulture processing
- 46) Skinning, dyeing and processes for manufacturing of leather and leather products
- 47) Stone breaking and stone crushing
- 48) Tobacco processing including manufacturing of tobacco, tobacco paste and handling of tobacco in any form
- 49) Tyre making, repairing, re-treading and graphite benefaction
- 50) Utensils making, polishing and metal burring
- 51) 'Zari' making (all processes)
- 52) Electro plating
- 53) Graphite powdering and incidental processing
- 54) Grinding or glazing of metals
- 55) Diamond cutting and polishing

- 56) Extraction of slate from mines
- 57) Rag picking and scavenging

### **The Juvenile Justice Act-2000**

The Juvenile Justice Act, 1986 has been replaced by a new Act called 'The Juvenile Justice (Care and Protection of Children) Act, 2000'. This new law is more child-friendly and provides for proper care and protection as also for ultimate rehabilitation of children in need of care and protection. A clear distinction has been made in the new law between the juvenile offender and the neglected child. The other salient features of this enactment are:

- (i) it prescribes a uniform age of 18 years below which both boys and girls are to be treated as children
- (ii) the Act directs that the cases related to juveniles should be completed within a period of four months
- (iii) it has been made compulsory to set up a Juvenile Justice Board (previously known as Juvenile Court) and Child Welfare Committee (previously known as Juvenile Welfare Board) either for a District or a group of Districts.
- (iv) special emphasis has been given for rehabilitation and social re-integration of the children and the alternatives provided for this are adoption, foster care, sponsorship and after-care. The new Act allows for adoption of a child within the purview of this Act by any community. The Juvenile Justice Board has been empowered to give such children in adoption even to a single parent and to parents to adopt a child of same sex irrespective of number of biological sons or daughters.

### **The Objective of the Act:**

- a) To Lay Down A Legal Structure For The Juvenile Justice System In The Country
- b) To Provide A Special Approach To The Protection And Treatment Of Juveniles
- c) To outline the machinery and infrastructure required for the care, protection, treatment, development and rehabilitation of juveniles
- d) To establish norms and standards for administration of juvenile justice
- e) To establish linkages and co-ordination between the formal system of juvenile justice and voluntary efforts in the welfare of juveniles
- f) To constitute special offences in relation to juveniles and provide punishment.

### **Salient features of JJA:**

The Act known as 'The Reformatory Act' deals with two categories of children, namely (1) children in need of care and protection and (2) children in conflict with the law.

The competent authority to deal with children in need of care and protection is the Child Welfare Committee which constitutes a Chairperson and four other members, one of whom at least should be a woman. Chapter IV of this Act would focus in detail about Children in need of

care and protection and the functioning of the CWC in rehabilitation and disposition of cases

Juvenile Justice Board (JJB) is the competent authority to deal with children in conflict with law which comprises of three members. The Chairperson of the Board should be a First Class Judicial Magistrate and two honorary social workers out of whom at least one should be a woman. Special provisions for children in conflict with law and the responsibilities of the Board are discussed in detail in Chapter III of this Act.

The Act provides for the establishment of various kinds of Institutions such as

- a. Children's Home for the reception of child in need of care and protection. Special Homes for the reception of child in conflict with law
- b. Observation Homes which are meant for the temporary reception of children during the pendency of any inquiry.
- c. After-care Organizations which are meant for the purpose of taking care of children after they have been discharged from Children's Home or Special Homes.

A few sections in the Act (Sec 23 – 26) are focused on the offences committed by anyone against a child such as assault, causing mental or physical suffering and employment of a child which are considered as non bailable offences.

The Ministry of Women and Child Development at New Delhi, the 26th day of October, 2007 notified the Model Rules under the Juvenile Justice (Care and Protection of Children) Act 2000 and the Amendment Act 2006 to be administered by the States for better implementation and administration of the provisions of the Act in its true spirit and substance.

These rules called the Juvenile Justice (Care and Protection of Children) Rules, 2007 has come into force on the date of its publication in the Official Gazette and these Rules will be conformed to until the concerned State Government formulates Rules specific for the State with effect to implementation of the JJ Act.

The Act in Section 68 prescribes various areas wherein the Rules can be applied to for better implementation of the Act, specifically with management of the homes, standards to be adhered to, roles and responsibilities of the JJ functionaries, procedures and functioning of the competent authorities, rehabilitation mechanism and operation of JJ Fund.

It is recommended that the Act is implemented in line with the Rules to promote better understanding of the Act in order to benefit the children who come in contact with the JJ System.

# 5

## Right to Education Act 2009

The Right of Children to Free and Compulsory Education (or RTE) came into force in India with effect from 1 April 2010 (GoI 2009). As per the RTE Act, 2009, every child has the right to full-time elementary education of satisfactory and equitable quality in a formal school that satisfies certain essential norms and standards. The need to address inadequacies in retention, residual access, particularly of un-reached children, and the questions of quality are the most compelling reasons for the addition of Article 21A in the Constitution of India. Vide 86th Constitutional Amendment, a new Article 21A was added in Part I of the Constitution of India to make free and compulsory elementary education a fundamental right for children. This is in view of the number of children particularly those from disadvantaged groups and weaker sections — who drop out of school before completing upper primary education remains high.

There had been series of bills passed by Government just before reaching the final stage of RTE in 2009. These include.....

- The Free and Compulsory Education For Children Bill, 2003
- The Free and Compulsory Education For Children Bill, 2004
- The Right to Education Bill, 2005 (CABE Bill)
- The Right to Education Bill, 2005 (August)
- The Model Right to Education Bill, 2006
- The Right of Children to Free and Compulsory Education Bill, 2008, introduced/ passed in Rajya Sabha
- RTE came into effect from 1 April 2009

### Major focus of RTE is to

- provide for free and compulsory education to all children of the age 6 to 14 years.
- Lay Emphasis is on children belonging to disadvantaged group.
- Right of child to free and compulsory education in a neighbourhood school till Completion of elementary education.
- Compulsory education made as the obligation of the state to provide free elementary education to every child of the age 6-14 years

Highlights of RTE on the Rights of Children to free and compulsory admission, attendance and completion of Elementary Education.

- Defines 'free' as removal of any financial barrier by the state that prevents a child from completing eight years of schooling
- And defines 'compulsion' as compulsion on the state, rather than targeting parents.
- Not enrolled/dropout children be admitted to age appropriate class
  - Special training to enable such children to be at par with others
  - Child so admitted entitled to completion of EE even after age 14
- Softens barriers like birth certificate, transfer certificate, etc
- No child shall be psychologically abused by calling him/her 'failed' in any class upto class 8, or expelling him/her from school
- Bars corporal punishment, mental harassment

Highlights of various sections and its implications

### **Sec. 13**

- No capitation fee to be charged. (The All India Catholic Education Policy, 2007 also deplores any attempt to commercialize education and acceptance of capitation fee).
- No screening either of the child or of the parents for admission.

### **Sec. 14 –**

- Age of the child is to be determined on the basis of the birth certificate issued in accordance with the provisions of the Births, Deaths and Marriage Registration Act, 1886 or Hospital register record or Anganwadi record or even an Affidavit. No child shall be denied admission in a school for lack of age proof.

### **Sec. 15**

- No denial of admission even if the child does not turn up at the commencement of the academic year.

### **Sec. 16**

- No child once admitted, can be held back or expelled till the completion of elementary education.

### **Sec. 17**

- No child shall be subjected to physical punishment or mental harassment.

### **Sec. 18**

- No school to be established without obtaining certificate of recognition.

### **Sec. 19**

- Schools to fulfill all the norms and standards specified in the schedule.

### **Sec. 20**

- Power of the Govt. to amend the schedule

### **Sec. 21**

- Every school should constitute a School Management Committee (SMC) consisting of:

The elected representatives of the local authority, parents/guardians and teachers,

At least  $\frac{3}{4}$  of members shall be parents/guardians, Proportionate representation should be given to the parents/guardians of children belonging to disadvantaged group and weaker section, 50% members shall be women

- Functions of the SMC. The SMC shall
  - o Monitor the working of the school,
  - o Prepare and recommend school development plan,
  - o Monitor the utilization of the grants received from the govt.,
  - o Perform other functions as may be prescribed.

### **Sec. 22**

- Preparation of School Development Plan by the SMC.

### **Sec. 23**

- States that the qualification for appointment and terms and conditions of service of teachers shall be as laid down by the academic authority authorized by the Govt.

### **Sec. 24**

- Duties of teachers. Teachers shall maintain regularity & punctuality, complete the curriculum, hold regular meetings with parents/guardians, etc.

### **Sec. 25**

- Pupil-Teacher Ratio as specified in the schedule is to be maintained, i.e., Classes I-V 30:1. Above 200 children

- P-T ratio shall not exceed 40. Classes V-VIII 1:35, but at least one teacher per class.

### **Sec. 26**

- Filling up of vacancies of teachers.

### **Sec. 27**

- Prohibition of deployment of teachers for non-educational purposes other than decennial population census, disaster relief duties and for election duties.

### **Sec. 28**

- No private tuition by teachers.

### **Sec. 29**

- Curriculum and evaluation procedure for elementary education shall be laid down by academic authority to be specified by the appropriate government,
- medium of instruction shall, as far as practicable, be in child's mother tongue,
- comprehensive and continuous evaluation of child's understanding etc.

### **Sec. 30**

- No child shall be required to pass any board exam till completion of elementary education,
- Every child completing elementary education shall be awarded a certificate.

### **Sec. 31**

- The National Commission or the State Commission for Protection of Child Rights constituted under the Commission of Protection of Child Rights Act, 2005, shall in addition to the functions assigned to it, monitor, enquire into complaints relating to child's right to free and compulsory education and/or function as Appellate Authority above the local authority.

### **Sec. 33 & 34**

- Defines the functions of National and State Advisory Council.

### **Sec. 35**

- The appropriate government may issue guidelines and give directions to the local authority or to the School Managing Committee.

### **Sec. 38**

- Appropriate government may make rules for carrying out the provisions of this Act.

### **Redefining the Composition of School Management Committee (SMC) :**

- 75% from parents/guardians
- Of the remaining 25%:
  - 1/3 members from amongst elected members of the local authority
  - 1/3 members from the teachers of the school to be decided by the teachers
  - Remaining 1/3 from amongst local educationists/children in the school to be decided by the parents in the committee
- The SMC shall elect a Chairperson and Vice-Chairperson from among the parent members.
- The Head Teacher/Senior most teacher of the school shall be the ex-officio member – convener.
- The SMC is to meet at least once a month and maintain minutes and decisions of the meetings.
- Prepare a 3 year school development plan.

### **Provisions are applicable to private Management schools:**

- No capitation
- No screening tests for admission
- No school to function without recognition
- 25% admission to children from disadvantaged groups in the neighbourhood,
- Appropriate Government, Local Authority ensure free and compulsory education
- Provide schools in neighbourhood within 3 years
- Children belonging to weaker sections and disadvantaged groups not to be discriminated against infrastructure, school building, teaching staff, learning equipment
- Special training for previously not enrolled or drop out children to enable them to be en par with others
- Monitoring of admission, attendance, completion of EE

- Good quality EE conforming to specified norms and standards
- Timely prescription of curriculum, courses of study and teachers' training
- Curriculum by prescribed academic authority should:
  - Conform to constitutional values
  - Make child free from fear, trauma and anxiety
  - Be child centered, child friendly; provide for learning through activities
  - Medium of instruction – child mother tongue to the extent possible
  - Provide for comprehensive and continuous evaluation

### **Measures included to protect this Right**

- Bill assigns NCPCR/SCPCR additional functions
  - Examine and review safeguards for rights under this Act, recommend measures for effective implementation
  - Inquire into complaints relating to child's right to free and compulsory education
- NCPCR/SCPCR have powers assigned under Section 14 and 24 of the Commissions for Protection of Child Rights Act
- Where SCPCR not constituted, appropriate Government may constitute an Authority

## 6

## Protection of children from Sexual Offences Act 2012 (POCSO 2012)

The Ministry of Women and Child Development, recognising that the problem of child sexual abuse needs to be addressed through less ambiguous and more stringent legal provisions, championed the introduction of a specific law to address this offence. The POCSO Act was therefore formulated in order to effectively address the atrocious crimes of sexual abuse and sexual exploitation of children. The Protection of Children from Sexual Offences Act, 2012 received the President's assent on 19th June 2012 and was notified in the Gazette of India on 20th June, 2012. The Act is due to come into force shortly, along with the rules being framed under the Act.

The Act defines a child as any person below eighteen years of age, and regards the best interests and well being of the child as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child. It defines different forms of sexual abuse, including penetrative and non-penetrative assault, as well as sexual harassment and pornography, and deems a sexual assault to be "aggravated" under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority vis-a-vis the child, like a family member, police officer, teacher, or doctor. People who traffic children for sexual purposes are also punishable under the provisions relating to abetment in the Act. The Act prescribes stringent punishment graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and fine.

In keeping with the best international child protection standards, the Act also provides for mandatory reporting of sexual offences. For the offences related penetrative Sexual assault and aggravated Sexual assault, the burden of the proof is shifted on the accused. The provision has been made keep in view the greater vulnerability and innocence of the children. At the same time, to prevent misuse of the law, Punishment has been provided for making false complaint or providing false information with malicious intent.

This also casts a legal duty upon a person who has knowledge that a child has been sexually abused to report the offence; if he fails to do so, he may be punished with six months' imprisonment and/ or a fine. Thus, a teacher who is aware that one of her students has been sexually abused by a colleague is legally obliged to bring the matter to the attention of the authorities. The Act, on the other hand, also prescribes punishment for a person, if he provides false information with the intention to defame any person, including the child.

The Act recognizes that the intent to commit an offence, even when unsuccessful for whatever reason, needs to be penalized. The attempt to commit an offence under the Act has been made liable for punishment for up to half the punishment prescribed for the commission of the offence. The Act also provides for punishment for abetment of the offence, which is the same as for the commission of the offence. The media has been barred from disclosing the identity of the child without the permission of the Special Court. The punishment for breaching this provision by media may be from six months to one year.

For speedy trial, the Act provides for the evidence of the child to be recorded within a period of 30 days. Also, the Special Court is to complete the trial within a period of one year, as far as possible. Thus, the police personnel receiving a report of sexual abuse of a child are given the responsibility of making urgent arrangements for the care and protection of the child, such as obtaining emergency medical treatment for the child and placing the child in a shelter home, should the need arise. The Act also casts the police in the role of child protectors during the investigative process. The police are also required to bring the matter to the attention of the Child Welfare Committee (CWC) within 24 hours of receiving the report, so the CWC may then proceed where required to make further arrangements for the safety and security of the child.

The Act also makes provisions for the medical examination of the child designed to cause as little distress as possible. The examination is to be carried out in the presence of the parent or other person whom the child trusts, and in the case of a female child, by a female doctor.

The Act further makes provisions for avoiding the re-victimisation of the child at the hands of the judicial system. It provides for special courts that conduct the trial in-camera and without revealing the identity of the child, in a manner that is as child-friendly as possible. Hence, the child may have a parent or other trusted person present at the time of testifying and can call for assistance from an interpreter, special educator, or other professional while giving evidence; further, the child is not to be called repeatedly to testify in court and may testify through video-link rather than in the intimidating environs of a courtroom. Above all, the Act stipulates that a case of child sexual abuse must be disposed of within one year from the date the offence is reported.

Another important provision in the Act is that it provides for the Special Court to determine the amount of compensation to be paid to a child who has been sexually abused, so that this money can then be used for the child's medical treatment and rehabilitation.

**Punishments for offences covered in the act are:**

- Penetrative sexual Assault (Section 3) – Not less than seven years which may extend to imprisonment for life, and fine (Section 4)
- Aggravated penetrative sexual assault (section 5) – Not less than 10 Years which may extent to imprisonment for life, and fine (section 6)
- Sexual assault (Section 7) – Not less than three years which may extend to five years and fine (section 8)
- Aggravated sexual assault (section 9) – Not less than five years which may extend to seven years, and fine (section 10)
- Sexual harassment of the child (section 11)- Three years And fine (section 12)
- Use of child for pornographic purposes (section 13) – Five years and fine and in the event of subsequent conviction, seven years and fine [Section 14 (1)]

**Summary of Provisions by court under this Act.**

- The Act provides for the establishment of Special Courts for trial of offences under the Act, keeping the best interest of the child as of paramount importance at every stage of the judicial process. The Act incorporates child friendly procedures for reporting, recording of evidence, investigation and trial of offences. These include:
- Recording the statement of the child at the residence of the child or at the place of his choice, preferably by a woman police officer not below the rank of sub-inspector
- No child to be detained in the police station in the night for any reason.
- Police officer to not be in uniform while recording the statement of the child
- The statement of the child to be recorded as spoken by the child
- Assistance of an interpreter or translator or an expert as per the need of the child
- Assistance of special educator or any person familiar with the manner of communication of the child in case child is disabled
- Medical examination of the child to be conducted in the presence of the parent of the child or any other person in whom the child has trust or confidence.
- In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.
- Frequent breaks for the child during trial
- Child not to be called repeatedly to testify
- No aggressive questioning or character assassination of the child in-camera trial of cases

The Act casts a duty on the Central and State Governments to spread awareness through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions of this Act. The National Commission for the Protection of Child Rights (NCPCR) and State Commissions for the Protection of Child Rights (SCPCRs) have been made the designated authority to monitor the implementation of the Act.

# 7

## Prohibition of Child Marriage Act, 2006

The Prohibition of Child Marriage Act, 2006 (PCMA, 2006) was notified on 10 January 2007 to overcome the constraints of the former legislations in effectively dealing with the problem of child marriages in India and to put in place a comprehensive mechanism. It came into force on 1 November 2007.

### Whom does it apply to?

- It applies to all citizens of India irrespective of religion, without and beyond India.
- It however, does not apply to the State of Jammu and Kashmir.
- It excludes the Reno cants of the Union Territory of Pondicherry from its application. For them the French Civil Laws are applicable as they are treated as citizens of France.

The basic premise of the law is:

- To make a child go through a marriage is an offence<sup>6</sup>.
- Child or minor is a person up to 18 years in the case of girls and 21 years in the case of boys<sup>7</sup>.

The provisions of this law can be classified into three broad categories:

#### A. Prevention

#### B. Protection

#### C. Prosecution of Offenders

#### A. Prevention

The law seeks to prevent child marriages by making certain actions punishable and by appointing certain authorities responsible for the prevention and prohibition of child marriages. These persons are responsible for ensuring that the law is implemented. It is also the responsibility of the community to make use of the law. More specifically, under the law:

1. The solemnisation of child marriages is a cognisable and non-bailable offence<sup>8</sup>.
2. Child Marriage Prohibition Officers (CMPOs) are to be appointed in every state to prevent child marriages, ensure protection of the victims as well as prosecution of the offenders<sup>9</sup>.

<sup>6</sup> Sections 10, 11 and 15 of the Prohibition of Child Marriage Act, 2006 (PCMA, 2006)

<sup>7</sup> Section 2 (a), PCMA 2006

3. The Courts have the power to issue injunction for prohibiting child marriages from taking place<sup>10</sup>.
4. Child marriages will be declared null and void if the injunction prohibiting a child marriage from taking place is violated/ contravened or, if the child is taken away from their lawful guardian by enticement, force or use of deceitful means or, is sold or trafficked for the purpose of marriage<sup>11</sup>.
5. The law lays down penal provisions for those who solemnise child marriages<sup>12</sup>.
6. The CMPO and District Collector are responsible for sensitisation and awareness creation in the community<sup>13</sup>.

The Prohibition of Child Marriage Act, 2006, under section 11 provides punishment for those who permit and promote child marriages. Hence, it is necessary that every individual who is aware of any child marriage that is going to be conducted or is being conducted or has been conducted, to make sure that he/she does not permit or promote the child marriage by not reporting about it. He/she can be made liable under the present law and also the Indian Penal Code for abetting the offence.

## **B. Protection**

1. The law makes child marriages voidable by giving choice to the children in the marriage to seek annulment of marriage<sup>14</sup>.
2. It provides for maintenance and residence of the female contracting party<sup>15</sup>.
3. It gives a legal status to all children born from child marriages and makes provisions for their custody and maintenance<sup>16</sup>.
4. The law provides for all support and aid including medical aid, legal aid, counselling and rehabilitation support to children once they are rescued<sup>17</sup>.
5. The Child Marriage Prohibition Officer has been empowered:
  - to provide necessary aid to victims of child marriage<sup>18</sup>
  - to provide legal aid<sup>19</sup>
  - to produce children in need of care and protection before the

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8 Section 15, PCMA 2006

9 Section 16, PCMA 2006

10 Section 13, PCMA 2006

11 Sections 12 and 14, PCMA 2006

12 Section 10, PCMA 2006

13 Sections 13 (4) and 16 (3) (d), PCMA 2006

Child Welfare Committee or a First Class Judicial Magistrate, where there is no Child Welfare Committee<sup>20</sup>.

### C. Prosecution of Offenders

1. The law provides for punishment for an adult male above 18 years of age marrying a child<sup>21</sup>.
2. It also lays down punishment for those performing / conducting/ abetting a child marriage<sup>22</sup>.
3. It prescribes punishment for promoting or permitting solemnisation of child marriage, including for parents, guardians or any other person/ association/ organisation<sup>23</sup>.
4. The law clearly states that women offenders in any of the above categories cannot be punished with imprisonment. However, they can be penalised by way of imposition of a fine<sup>24</sup>.

### 5. Mechanisms under the law

The authorities identified for prohibiting child marriage under the present law are:

1. Child Marriage Prohibition Officer
2. District Magistrate
3. First Class Judicial Magistrate or Metropolitan Magistrate
4. Police
5. Family Courts
6. Any person(s) called upon by the State Government to assist the Child Marriage Prohibition Officer. These could include -

a respectable member of the locality with a record of social service, officer of the Gram Panchayat or Municipality, officer of the government or public sector undertaking, office bearer of any non-governmental organisation.

14 Section 3(2) and 3(3), PCMA 2006

15 Section 4, PCMA 2006

16 Sections 5 and 6, PCMA 2006

17 Section 16 (3) (g), PCMA 2006

18 Section 16 (3) (g), PCMA 2006

19 Section 16 (3) (g), PCMA 2006

20 Section 32 of Juvenile Justice (Care and Protection of Children) Act 2000, as amended in 2006.

21 Section 9, PCMA 2006

22 Section 10, PCMA 2006

23 Section 11, PCMA 2006

24 Provison to Section 11 (1), PCMA 2006

- 14 Section 3(2) and 3(3), PCMA 2006
- 15 Section 4, PCMA 2006
- 16 Sections 5 and 6, PCMA 2006
- 17 Section 16 (3) (g), PCMA 2006
- 18 Section 16 (3) (g), PCMA 2006
- 19 Section 16 (3) (g), PCMA 2006
- 20 Section 32 of Juvenile Justice (Care and Protection of Children) Act 2000, as amended in 2006.
- 21 Section 9, PCMA 2006
- 22 Section 10, PCMA 2006
- 23 Section 11, PCMA 2006
- 24 Provison to Section 11 (1), PCMA 2006

## 6. Reporting Child Marriages

Any person can report an incidence of child marriage before or after it has been solemnised. An immediate report needs to be made to:

- The Police
- The Child Marriage Prohibition Officer or such persons as

may be appointed to assist him/her

- First Class Judicial Magistrate or Metropolitan Magistrate
- Child Welfare Committee or a member of the Child Welfare

Committee set up under the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006

- Child Line
- District Magistrate

A First Class Judicial Magistrate is empowered to take suo moto cognisance of any reliable report of information of child marriage. The Child Marriage Prohibition Officers are also responsible for reporting and preventing child marriages. In case of mass marriages the District Magistrate is also deemed to have the powers of a Child Marriage Prohibition Officer and therefore has the powers to stop or prevent solemnisation of child marriages.

## 7. Complaint

A complaint can be filed by any person, including those who report an incidence of child marriage. Such persons may include:

1. A person who has reason to believe that a child marriage is likely to take place.
2. A person who has personal information.
3. School teachers, doctors, ANMs, anganwadi workers, village level workers, SHG members, village elders, neighbours etc.
4. A parent or guardian of the child.
5. The Child Marriage Prohibition Officer or persons appointed to assist her/him.
6. A non-governmental organisation having reasonable information.

It is critical that concerted efforts are made towards creating awareness that motivates and empowers all community members to assume a pro-active role in curbing child marriages without fear. It is also important to ensure protection for the complainants to avoid repercussions that could defeat the purpose of social justice.

## 8. Where to File a Complaint?

Since arranging or solemnising a child marriage is a cognisable offence, a complaint has to be made in the nearest police station. The police must make a DD entry (an entry in the Daily Diary Register maintained at every police station) and register an FIR (First Information Report) based on such complaint.

A complaint can also be filed with a Judicial Magistrate of First Class or a Metropolitan Magistrate.

Complaints can be either oral or written, in the form of a phone call, a letter or a telegram, e-mail, fax or a simple handwritten note duly signed by the complainant.

## A Quick Recap of Important Provisions

### Child Marriage - An offence

- Child marriage is an offence punishable with rigorous imprisonment, which may extend to 2 years, or with fine up to Rs. 1 Lakh, or both.
- Courts can issue injunctions prohibiting solemnisation of child marriages (Section 13, PCMA 2006).
- Offences under the Act are cognisable and non-bailable
- (Section 15, PCMA 2006).

### Persons Who can be Punished Under the Law Include

- Whoever performs, conducts or directs or abets any child marriage  
(Section 10, PCMA 2006)
- A male adult above 18 years marrying a child  
(Section 9, PCMA 2006)
- Any person having charge of the child, including –
- parent or guardian
- any member of organisation or association, promoting,

permitting, participating in a child marriage or failing to prevent it  
(Section 11, PCMA 2006).

### Offenders could Include Amongst Others

- The guardians/parents of both parties
- Priests
- Relatives/friends of both parties
- Neighbours of both parties
- Community leaders who give patronage to such marriages
- Marriage bureaus/persons responsible for fixing marriages
- Traffickers
- The bridegroom if he is over 18 years of age
- Caterers and other service providers

### Annulment and Voidability of Child Marriage

- Child Marriages are voidable and can be annulled (Section 3 (1), PCMA, 2006).
- The annulment of child marriage can be sought within a period of 2 years after the child who was a party to the marriage has attained majority (Section 3(3), PCMA 2006).
- Only the children in the marriage themselves can file a petition for voidability or annulment of marriage. And if the petitioner is a minor as per PCMA, the petition can be filed through a guardian or the next best friend of the married child (who must be an adult of 18 years or more), along with the Child Marriage Prohibition

Officer (CMPO) (Section 3 (2), PCMA 2006).

- The District Court can grant nullity of marriage. The District

Court includes the Family Court and Principal Civil Court of Original Jurisdiction, and any other civil court specified by the State Government (Sections 3 and 2(e), PCMA 2006).

- Under certain circumstances, child marriages can be declared

null and void by the Courts. These include:

- where a marriage has been solemnised despite an injunction order passed under section 13 to prevent the child marriage from taking place (Section 14, PCMA 2006)
- where the child is taken away from their lawful guardian by enticement, force or use of deceitful means (Section 12 (a) and (b), PCMA 2006)
- when the child is sold or trafficked for purpose of marriage or through marriage (Section 12 ©, PCMA 2006).

### **Maintenance and Custody**

- The CMPO is empowered to provide support and all possible aid including medical and legal aid to children affected by child marriages (Section 16 (3) (g), PCMA 2006).
- The adult husband must pay maintenance to the minor girl until her re-marriage. In case the husband is a minor at the time of marriage, his guardian will pay maintenance (Section 4 (1), PCMA 2006).
- Children born from a child marriage are entitled to custody and maintenance because the law considers such children legitimate for all purposes even after the marriage has been annulled (Sections 5 and 6, PCMA 2006).
- A District Court is empowered to add to, modify or revoke any order relating to maintenance and custody of children born from a child marriage (Section 7, PCMA 2006).

Any decision regarding the child affected by the marriage must be determined by the principle of best interest of the child. This would include children who are in the marriage as well as children born from the marriage (Sections 4(2), 5(2) and 5(3), PCMA 2006)

## **Role of Stakeholders and Overriding Principles for All Action that must Govern any Action Concerning Children**

1. Respect for the child's dignity and privacy.
2. Ensuring that no action leads to further or multiple victimisation of the child physically, psychologically or emotionally.
3. All actions must be determined in the best interest of the child.
4. There shall be no discrimination based on caste, religion, ethnicity and gender as well as physical or mental disability.
5. Every child must be given the opportunity to express her/his opinion and concerns in determining any action for rescue, rehabilitation and restoration.
6. Legal procedures shall be child-friendly, from the time of first intervention by the police or concerned state government officials till the prosecution of offenders is completed.
7. Safety of the child shall be at the core of every action.
8. All citizens are responsible for ensuring that child marriages do not take place.
9. Ensuring co-ordination between the implementation mechanisms set out in the Prohibition of Child Marriage Act and the juvenile justice system already in existence for any action against child marriage.
10. Involvement of Panchayats and Municipal bodies for generating awareness and reporting on child marriage.
11. Caste Panchayats are not adjudicators or judicial mechanisms recognised by law to deal with crimes. Hence, they should not be called upon to play any role in deciding the legal course of action and the fate of the victims.

### **Role of Stakeholders that have been Identified in the Law is as Follows:**

#### **1. Child Marriage Prohibition Officer**

As a Child Marriage Prohibition Officer (CMPO), you are the most critical person for ensuring prohibition of child marriages in your district. The CMPO has the power to intervene and petition before a child marriage takes place as well as after the marriage on behalf of the child who is the victim.

#### ***A) If a Child Marriage is About to Take Place in the Near Future, the CMPO must:***

- Visit the home of both the contracting parties, and make the parents aware that child marriage is a punishable offence under the law and advise them not to conduct the marriage.
- Speak to the guardians/relatives/community elders and make them aware and try and convince them against the child marriage.

- Try and speak to the child in order to make him/her aware of child marriage and its ramifications. Help the child understand the situation and tell the child that it is his/her right not to get married.
- Seek the assistance of the panchayat, the local leaders, the teachers, government officials/public servants or a local NGO to convince the parents against child marriage.
- Monitor the situation closely.
- Complain to the police and with the assistance of the police get the offender arrested. The police have powers under section 151 of the Criminal Procedure Code to make arrests in order to prevent the commission of a cognisable offence.
- File a complaint to a First Class Judicial Magistrate if parents refuse to concede, seeking an injunction order under section 13 to prevent a child marriage from taking place.

**B) If the Marriage is Currently Taking Place, the CMPO must:**

- Report immediately to a Judicial Magistrate for him/her to issue an injunction to prevent a child marriage.
- Collect evidence of the marriage taking place (such as photographs, invitations, receipts of payments made for marriage purposes)
- Make a list of offenders who are responsible for arranging, performing, supporting, encouraging and helping in the marriage or attending it.
- Complain to the police and with the assistance of the police get the offenders arrested. The police have the powers under section 151 of the Criminal Procedure Code to make arrests in order to prevent any cognisable crime from taking place.
- If the child is at risk of being forced, threatened or enticed into child marriage, or if there is a risk to the child's life, provide immediate protection and aid to the child by producing the child before the Child Welfare Committee or before the First Class Magistrate where there is no Child Welfare Committee. Till such time the child can be kept in a children's home/drop-in-centre/short stay home recognised by the state government.
- Provide all support and aid including medical aid, legal aid, counselling and rehabilitation support to children once they are rescued.

**C) If a Child Marriage has Already Taken Place, the CMPO must:**

- Collect evidence of the marriage that has taken place (such as photographs, invitations, receipts of payments made for marriage purposes, witnesses)
- Make a list of offenders who were responsible for arranging, performing, supporting, encouraging and helping in the marriage or attending it.
- Complain to the police and with the assistance of the police get the offenders arrested.
- Remember that women involved in such offences are also offenders although they cannot be punished with imprisonment.

Therefore arrests should be made where necessary. It is for the courts to decide on the penalty to be imposed on women offenders.

- Produce the child before the nearest Child Welfare Committee as required under the Juvenile Justice (Care and Protection of Children) Act 2000, immediately or latest within 24 hours. Till such time the child can be kept in a children's home/drop-in- centre/short stay home recognised by the state government.
- In case no Child Welfare Committee is available, produce the child before a Judicial Magistrate of First Class for appropriate decision regarding his/her safety, care and protection. At no point should the child be kept in a police station.
- Ensure that the child is not subjected to having to repeat her/his statement before different authorities at different points of time causing re-victimisation.
- Ensure that the child is not subjected to unwarranted gynaecological examination and medical tests and every test conducted on the child is after informing the child and her/his parents/guardians/next best friend as the case may be, and on taking their consent.
- Provide all support and aid including medical aid, legal aid, counselling and rehabilitation support to children once they are rescued.
- Do not make the child appear in the court repeatedly; both evidence and cross-examination take place the same day as far as possible.
- The State Government can assign the CMPO various duties and functions to discharge. The CMPO must therefore act pro-actively to assess the infrastructural needs and other systemic needs that can enable justice for victims of child marriage as well as ensure prosecution of offenders. One such task can be supporting the establishment of fast track courts to ensure speedy justice. The CMPO may have to make up a case for the State Government to seek establishment of fast track courts if required.
- Make regular follow up visits if a child continues to stay with her/his parents. Removal of the child from home should be the last resort, only taken in the best interest of the child.
- Involve local NGOs/CBOs for follow-up assistance to the child, if required.
- Ensure investigation into the commission of any other offence against the child/victim under any other law.

## **2. Police**

On receiving a complaint, as a police person you should follow the procedures laid down in the Code of Criminal Procedure, 1973:

- Register an FIR and investigate. No police can refuse to accept the complaint, which may be made orally or in writing.
- All complaints must be converted into an FIR without delay.
- Report the matter to the Child Marriage Prohibition Officer (CMPO) for him/her to gather evidence about the instance of a child marriage.

- Report the matter to the District Magistrate for her/him to issue an injunction.
- Accompany the CMPO or the appointed person<sup>25</sup> for investigation.
- Arrest the offender as offences under the law are cognisable and non-bailable.
- Do not arrest or handcuff the child.
- In case of non-availability of CMPO or the appointed persons, visit the scene of crime (i.e. where a child marriage is being conducted/or has been conducted) and take necessary action, including rescue of the minor(s) if necessary.

The Code of Criminal Procedure in India clearly provides that cognizable offences brought before the police shall be recorded in the form of an FIR and due investigations shall be carried out by the police for ensuring legal action against the offenders.

When a case of arranging or solemnizing a child marriage is reported to a First Class Judicial Magistrate, the Magistrate should ensure that such incidences are investigated into and monitored, and the Prohibition Officer be made responsible for it.

- Avoid being in uniform when dealing with children to make them more comfortable and less intimidated.
- Ensure presence of a lady police officer in dealing with a girl child along with a female social worker/ teacher/anganwadi worker/ANM/ child's next friend (a person trusted by the child). Only in case there is NO LADY officer available immediately, should a male police person interact with the girl child, but in the presence of a female social worker/teacher/anganwadi worker/ ANM/ child's next friend.
- Produce the child/minor before the nearest Child Welfare Committee within 24 hours or before a Judicial Magistrate of First Class where such Committee is not available. Victims of child marriage are also children in need of care and protection under the Juvenile Justice Act and the rules made for its implementation.

Special Juvenile Police Unit mandated under the Juvenile Justice (Care and Protection of Children) Act, 2000 are meant to be created to engage with children who need care and protection under this law. The functions of a Special Juvenile Police Unit are also important in preventing child marriages.

- They are specifically trained and created to deal with children in need of care and protection.
- They should coordinate with the regular police and make sure that children rescued from child marriages are taken to the Child Welfare Committee/Judicial Magistrate of First Class as the case may be.
- Removal of children from the custody of parents/legal guardians must be the last resort and taken only in the best interest of the child. No such child shall be placed in police lock-up or police custody. Such child can only be placed in a fit institution recognised and registered under the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006.

- In addition to using the PCMA, you can use every other relevant law to ensure protection of children and prosecution of offenders. Chapter XX of the Indian Penal Code (IPC) for instance contains legal provisions on offences relating to marriage, which can be brought into use for booking a case<sup>26</sup>.

### 3. District Magistrate

District Magistrate is the prohibition officer with regard to section 13 (4) i.e. when mass child marriages are taking place. You are responsible for enforcing an injunction under section 13.

Section 13 of The Child Marriage Prohibition Act, 2006 Identifying areas of “intense necessity”, means identifying those rituals that promote child marriages, and steps should be taken to moderate the effect of these rituals in promoting child marriages. For example Akshaya Trutiya and similar events have been recognised as customs which promote child marriages. The District Magistrate has been empowered to act as a prohibition officer during such occasions and issue injunctions, which provides her/him with the authority to issue notifications to the effect that such occasions cannot be used for the purpose of organising or solemnising child marriages. A strict monitoring of such occasions and the result that is achieved due to such monitoring should be recorded.

- The Prohibition Officer, in this case, the District Magistrate, be made answerable for failure to regulate such occasions. Along with these powers, you are answerable for the enforcement of the legislation.
- Take suo motu cognisance of offences under the Act.
- Educate Panchayat Members on their role to prevent child marriage and encourage their involvement in reporting and filing of complaints.
- Set up necessary child helpline centres that provide assistance to children in need of care and protection, including children who want to resist child marriage and children rescued from child marriage.

### 4. Panchayat Members

As members of the gram panchayat/gram sabha you are closest to the community and also have the constitutional mandate to perform functions of the legislature. It is imperative that you play a leading role in preventing child marriages, protecting the victims as well as supporting the concerned authorities in evidence building so as to prosecution of the offenders.

- Assist the Child Marriage Prohibition Officer in preventing child marriages as per section 16 (2) of the Act. This could be done by convincing parents against conducting child marriages, educating parents and the community on the implications of child marriage for a child, providing information about the law, ensuring that children have access to education and their attendance and retention in schools is promoted.
- Assist the Child Marriage Prohibition Officer or the police in enforcing the law by providing necessary support and information.

- Ensure that no member of the gram sabha or gram panchayat is involved in promoting child marriages.
- For offenders within the gram panchayat, apart from legal action according to the law, their membership must be revoked. Other elected representatives in the panchayat must ask the Member Secretary to take necessary action in this regard.
- Create awareness within the community about the law and educate the community about the implications/consequences of early marriage for their child such as early childbearing, poor maternal health and mortality, poor infant health and mortality, and higher risk of HIV infection, lower levels of education, lower economic status and livelihood opportunities, higher likelihood of domestic violence and less decision-making power at home, especially for girls. Encourage the parents to wait for their children to reach the age of maturity (i.e. age 18 for girls and 21 for boys) before they are married.
- Assist enrolment and retention of all children, especially of girls, in school by making the village Education Committee aware of the issue of child marriage and enabling them to play a vigilant role in preventing child marriages. This could be done by keeping track of dropout out children and ensuring their enrolment and retention in schools, and making education accessible to all.
- Set up a Child Protection Committee within the Panchayat to create awareness and monitor child protection issues such as child marriage.

## 5. Teachers

Every school teacher has been made liable under section 16 to provide assistance to the Child Marriage Prohibition Officer to prevent child marriages. School teachers can play a key role in preventing child marriages.

- Inform the nearest police station as soon as you know that a child marriage is being performed or is about to be performed.
- Visit the nearest Judicial or Executive Magistrate to record a complaint, if it is not feasible to go to the police station or if the police fail to record your report.
- Make a phone call or write to the nearest police station/SP (Superintendent of Police)/Child Line/Child Welfare Committee/ the Department of Women and Child Development or the Social Welfare Department in the state, etc. in case the police station is far away or there are no Courts in the vicinity. You could also solicit support from the nearest non-governmental organization working with children
- Keep a direct check over the children in school who could be potential victims of child marriage, by keeping regular attendance at school.
- Make immediate visit to the house of the child if his/her absence is alarming and there is a potential of the child being married.

- Talk to the parents and try to convince them not to marry off their children early by informing them about its negative consequences.
- Inform parents about the law against child marriage, that the law declares child marriage an offence and lays down the legal consequences for parents who get their children married.
- Educate the children in school that child marriages are barred under the law.
- Educate children in school on their rights and availability of these to every child irrespective of their gender, caste, ethnicity or religion.
- Encourage participation of children in voicing their concerns and views about child marriages through different ways such as drawings, writings, plays and discussions.
- Conduct special sessions and invite members of the police and the CMPO to talk about child marriage.

## 8

## Convergence of Action and Services

All States should Frame their own Rules for Implementation of the PCMA. While implementation of the PCMA is the nodal responsibility of the

Ministry of Women and Child Development, the objectives of the law can best be met through convergence of action and services provided by other Ministries and Departments also.

The role of the Child Marriage Prohibition Officer, the Police, the District Magistrate/District Collector, Members of Gram Panchayats and School Teachers is specified in the Act.

However, other government functionaries whose assistance can be sought include:

- Child Development and Panchayat Officers (CDPO)
- District Child Protection Officers (DCPO)
- District Welfare Officers (DWO)
- Members of Child Welfare Committees
- Auxiliary Nurse Mid-wife (ANM)
- Anganwadi worker
- ASHA-health worker

Clearly, along with the Departments of Rural Development, Panchayati Raj and the Department of Education, the Health and Family Welfare Department too have a critical role to play while reaching out to women through its health programmes. For example, ASHA (Accredited Social Health Activist) is a health activist in the community who creates awareness on health and its social determinants, and mobilises the community towards local health planning as well as increased utilization of existing health services. They could thus play a very key role in promoting good practices that help establish a higher age at marriage at the community level. The ANMs and the ASHA-health worker for example, can include in their mandate an awareness drive to highlight the effects of early marriage on the health of young girls and early child bearing.

Some other schemes that can have an impact on child protection include crèche services provided through the ICDS and the Rajiv Gandhi National Crèche Scheme, which enables girl children to go to school and reduces the risk of trafficking and marriage. Vulnerability of the girl children can also be reduced by enabling access to benefits under existing schemes such as Balika Samridhi Yojana, Integrated Child

Development Scheme, Kishori Shakti Yojana, the Nutrition Programme for Adolescent Girls, Dhanalakshmi Pilot Scheme on Conditional Cash Transfers and National Programme for Education of Girls at Elementary Level. It could be valuable to develop a convergent “Anti-Child Marriage Action Plan” in the districts whereby the roles and responsibilities of all the stakeholders are clearly spelt out.

### **Other Possible Actions at the District/State/National Level**

- As part of awareness drives, campaigns against child marriages be taken up by various Ministries/Departments, kiosks be created, and messages against child marriages be sent out through the means of print and electronic media, folk theatre, puppetry, traditional forms of art or other forms of literature, for the necessary devolution of information.
- The Department of Education to make the education process responsive to the needs of this Act, which will also make it clear that teachers necessarily need to assist in the prohibition of child marriage. A curriculum focused approach be introduced which spreads information about the consequences of child marriages.
- The National and State Commissions for the Protection of Child Rights as well the National Human Rights Commission and the National Commission for Women have been given powers to monitor child welfare measures and also the implementation of laws that are meant to protect the rights of children. These statutory bodies therefore need to direct and monitor the implementation of the anti-child marriage law too.
- Publication of periodic and post-judicial data, which provide necessary information about the measures undertaken and results achieved, also becomes important because the conviction rate under the earlier legislation was low. The prohibition officer under the present legislation has already been entrusted with the duty to furnish such periodical returns and statistics as the state government may direct.
- Enforcement of Article 21A of the Indian Constitution, which provides for compulsory education, can be highlighted to ensure that children are not left without the benefits of education.
- When the States make their rules for implementation of the Act, ensuring convergence on empowerment initiatives that are undertaken by the government for the benefit of children can be enlisted within the duties of the Prohibition Officer.
- At the panchayat level, efforts need to be made to include within the list of legislative powers made available to the panchayats under the 73rd amendment of

the Indian Constitution, measures to educate the members of the gram panchayat to secure the help of the prohibition officer in cases involving child marriages. Such grams sabas be targeted and made accountable where there is evidence that child marriages are rampant. It is important to create child help line centres across various levels where it is thought that the need for child protection is necessary.

- Reducing marginalisation and vulnerability of families through social and economic empowerment is an important preventive measure that must find its way into all policy and action. Such vulnerable families must be identified for accessing benefits under the poverty alleviation programmes and development schemes of the government. The Department of Women and Child Development and the Department of Rural Development must collaborate to achieve this end.

## 9

## National and State level Mechanisms

### National Commission for Protection of Child Rights (NCPCR)

The National Commission for Protection of Child Rights (NCPCR) was set up in March 2007 as a statutory body under the Commission for Protection of Child Rights Act, 2005. Besides the chairperson, it will have six members from the fields of child health, education, childcare and development, juvenile justice, children with disabilities, elimination of child labour, child psychology or sociology and laws relating to children. The commission is mandated to ensure that all laws, policies, programs, etc 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.

As per the Act, the commission has to ensure that a rights-based perspective is reflected in the policies and programs carried out at all the levels. In order to touch every child, it seeks a deeper penetration to communities 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, 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.

### Functions of the Commission

The Commission shall perform all or any of the following functions, namely;

- 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 Government, 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, marginalised and 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 periodic 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
- h. Spread child rights literacy among various sections of 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 the Central Government or any State Government 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

**Inquire into complaints and take su moto notice of matters related to:**

- a. Deprivation and 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
  - d. Such other functions as it may consider necessary for the promotion of child rights and any other matter incidental to the above functions
2. The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force. In addition, the Commission is to perform the following functions as well:
- a. Analyse existing law, policy and practice to assess compliance with Convention on the Rights of the Child, undertake inquiries and produce reports on any aspect of policy or practice affecting children and comment on proposed new legislations from a child rights perspective

- b. Present to the Central Government annually and at such intervals as the Commission may deem fit, Reports upon the workings of these safeguards
- c. Undertake formal investigations where concern has been expressed either by children themselves or by concerned persons on their behalf
- d. Ensure that the work of the Commission is directly informed by the view of children in order to reflect their priorities and perspectives
- e. Promote, respect and seriously consider the views of children in its work and that of all Government Departments and Organizations dealing with children
- f. Produce and disseminate information about child rights
- g. Compile and analyse data on children
- h. Promote the incorporation of child rights into the school curriculum, teachers training and training of personnel dealing with children

### **Powers of the Commission**

The Commission has all powers of the Civil Court trying a suit under the Code of Civil Procedures, 1908 and in particular, with respect to the following matters:

1. Summoning and enforcing the attendance of any person from any part of India and examining them on oath
2. Requiring the discovery and production of any documents
3. Receiving evidence on Affidavits
4. Requisitioning of any Public Record or copy thereof from any Court of Office
5. Issuing commissions for the examination of witnesses or documents
6. Forwarding cases to Magistrates who have jurisdiction to try the same
7. On completion of inquiry, the Commission has the powers to take the following actions:
  - a. To recommend to concerned Government for initiation of proceedings for prosecution or other suitable action on finding any violation of child rights and provisions of law during the course of an inquiry
  - b. To approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary
  - c. To recommend to concerned Government or authority for grant of such interim relief to the victim or the members of his family as considered necessary

## Activities

In order to attain the Commission's Mandate of ensuring that each and every child has an access to all entitlements and enjoys all the rights, the Commission's focus is on the following tasks:

1. to build public awareness and create a moral force in the country to stand by children and protect their rights. A National Conscience has to be generated that captures the imagination of each citizen to take pride in the nation because it takes care of all its children.
2. Armed with this kind of a mood the Commission's task is to look at the gaps in the policy framework and the legal framework and make recommendations to see that rights-based perspective is adhered to by the Government, while it makes its policies.
3. to take up specific complaints that come up before it for redressal of grievances and also take up suo moto cases, summon the violators of child rights, get them presented before the Commission and recommend to the Government or the Judiciary, action based on an inquiry.
4. Conduct proper research and documentation. The legitimacy and credibility to what the Commission says and does is based on solid research and data. Though everyone in the country knows that the predicament of the majority of children in our country is vulnerable and that children are not treated well, this has to be substantiated by information; it cannot just be an emotional argument

## State Commission for Protection of Child Rights (SCPCR)

To act in accordance with the CRC, Indian government has enacted Commission for Protection of Child Right Act, 2005, which was again amended in 2007. This Act empowers government to constitute National Commission for Protection of Child Right (NCPCR) at the national level and State Council for Protection of Child Rights at the State level to protect, promote and defend child rights in the country. The State Commission for protection of Child Rights (SCPCR) is to be established in each of the State as per the provisions of the Commissions for Protection of Child Rights Act 2005. It is set up to protect, promote and defend child rights in each of the state. The commission consists of a Chairperson and six members who are well versed in child welfare. At least one member should be a woman. The State commission is required to submit an annual report to the State Government as well as special reports when an issue needs immediate attention.

The SCPCR will examine and review the safeguards provided by any law, present reports on the status of child rights protection from time to time and ensure that children affected by terrorism, communal violence, riots, natural disaster, domestic violence, HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution, and recommend appropriate remedial measures.

The SCPCR also look into needs of children requiring special care and protection including children in distress, marginalised and disadvantaged children, juveniles in conflict with law, those without families and children of prisoners.

It will undertake periodic review of current policies pertaining to children, after studying treaties and other international instruments. Besides undertaking and promoting research in the field of child rights, the SCPCR will also have to take efforts to spread child rights literacy among various sections of the society.

The Government of Tamilnadu enacted Tamilnadu State Commissions for Protection of Child Right Rule, in 2009, which has facilitated the formation of State Commission for Protection of Child Right. The Commission will observe eradication of child labour, juvenile justice act and child rights violations cases in the state.

The Commission has powers to inquire into complaints and take suo moto notice of matters relating to deprivation and violation of child rights, and failure to comply with the law. The address of the SCPCR in Tamilnadu is State Commissioner for Protection of Child Rights No.300,Puraswalkam High Road, Kellys, Chennai-600010 and the Chairperson is Tmt. Saraswathi Rangasamy and her contact number is 044-26421359

#### **Role of SCPCR :**

- To safeguard the rights, privileges, complaints & suo motto action
- Inquiries & investigation relating to violations of child rights
- Review of safeguards for protection of child rights
- Research, studies and data analysis
- Examining Factors Inhibiting Enjoyment of Child Rights
- Looking into Matters relating to Children in need of Special Care & Protection
- Inspection of Juvenile Custodial Homes/Child Care Institutions
- Child Rights Literacy & Awareness
- Promoting Child Participation

**Powers of SCPCR**

- (a) All the powers of a Civil Court trying a suit under the code of Civil Procedure, 1908 including:
- Summoning and enforcing the attendance of any person and examining him on oath;
  - Discovery and production of any document;
  - Receiving evidence on affidavits;
  - Requisitioning any public record or copy thereof from any Court or office, and;
  - Issuing commissions for the examination of witnesses or documents
  - To forward any case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973 .
- (b) To recommend the concerned Government or authority for initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons.
- (c) To approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary.
- (d) To recommend to the concerned govt. or authority for the grant of such interim relief to the victim or the members of his family as the Commission may consider necessary.



### Authors

**Dr. John Devavaram**

*Director, RCPDS, Madurai.*

### Resource Centre for Participatory Development Studies

Plot No, 7, Park Town Sixth Street,  
Post and Telegraph Colon  
Madurai 625 017, Tamilnadu, India  
[rcpdsmdu@gmail.com](mailto:rcpdsmdu@gmail.com), [www.rcpds.org](http://www.rcpds.org)

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