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ANALYSIS OF THE NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS (NCPCR)

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ABSTRACT

The protection of child rights in India, which was primarily based on welfare, has now transformed into a right, based legal framework that mirrors constitutional values and international commitments. The National Commission for Protection of Child Rights (NCPCR), set up under the Commissions for Protection of Child Rights Act, 2005, plays a pivotal role in this framework.

This paper critically examines the legal mandate, powers, and functioning of the NCPCR, trying to find out whether it has been successful in fulfilling its statutory role as a child rights watchdog. Despite being vested with quasi, judicial powers and wide, ranging advisory capabilities, the Commission's effectiveness is seriously questioned as it issues non, binding recommendations, suffers from a shortage of resources, and faces questions of institutional independence.

KEYWORDS

Child Rights, NCPCR, UNCRC, Quasi – Judicial Bodies, Child Protection Law, Institutional Accountability

INTRODUCTION

Children hold a special place in the realm of constitutional law. On one hand, they are defenceless individuals; on the other hand, they are the future carriers of constitutional values. Recognizing this dual nature of children, the Indian legal system has passed several laws that focus on the protection of children. Of these, the National Commission for Protection of Child

Rights (NCPCR) is the highest statutory authority that has the power to monitor, review, and enforce child rights.

The NCPCR was set up to comply with India's commitments under the United Nations Convention on the Rights of the Child (UNCRC). It symbolizes a change of approach from charity, based welfare to the realization of rights by law. Nevertheless, justice is not assured by the mere establishment of an institution. The present study critically questions the role NCPCR has played and discusses if it has become a genuine protector of child rights or if it still suffers from the same old problems of structural and political constraints.

STATEMENT OF THE PROBLEM

This research mainly focuses on the question of whether the current legal and institutional framework regulating the NCPCR is sufficient to guarantee the effective protection of child rights in India.

RESEARCH OBJECTIVES

1. To study the legal provisions set by the law for the National Commission for Protection of Child Rights.
2. To study the mandate of NCPCR through its authority and powers as the quasi, judicial body.
3. To assess how well the NCPCR has done the work of protecting and promoting the rights of the children.
4. To find the areas of difficulties, both in terms of structure and law, which hinder the Commission's operation.
5. To propose changes that would help the NCPCR to play a more effective role.

LITERATURE REVIEW

1. Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights* (Oxford University Press, 2017) - Ved Kumari most significant work is the law on child protection in India. She shows the historical development of initially a welfare, based approach to children legislation to a right, based approach, particularly highlighting the role of the institutions. It is not a study NCPCR, focused that the author points out the failures of the system as well as the enforcement of the law is very weak. This paper uses Kumaris criticism in understanding the NCPCR among other institutional failings in the child protection sector.

2. Flavia Agnes & Lotika Sarkar (eds.), *Women and Law in India* (Oxford University Press, 2014) - In this anthology, the authors discuss those members of society who are vulnerable by virtue of their status, such as children, and they investigate statutory bodies that have been established for the protection of those groups. Besides, it reveals the situation of quasi-judicial commissions which are judges in some issues but must suffer from lack of autonomy and political interference. This research uses this source to provide evidence for the claim that institutions are not independent.

3. Law Commission of India, 205th Report on Proposal to Amend the Commissions for Protection of Child Rights Act, 2005 (2008). - The Law Commission report reviews the working of child rights commissions and suggests structural changes to make them more effective. It particularly mentions lack of enforcement mechanisms and poor coordination with State Commissions as major issues. This article takes these observations to argue more rigorously against the non-binding nature of NCPCR recommendations.

4. Smriti Thukral, *Institutional Framework for Child Rights Protection in India* (2016) 58 *Journal of the Indian Law Institute* 312 - The paper explores among other things the role of statutory commissions like the NCPCR in the enforcement of child rights. It points out that entities without sanctioning powers usually end up as mere symbols. This paper extends Thukral's argument by demonstrating the current functioning of the NCPCR as a case in point.

5. UNICEF India, *Assessment of Child Protection Systems in India* (2015) - This report presents firsthand accounts of how child protection institutions in India work. Although it is not particularly concerned with the NCPCR, it underlines the lack of coordination between central and state-level bodies. The author uses these results to delineate the NCPCR's difficulties in functioning.

6. *Judicial Decisions and Commentaries* - Case law such as *Sampurna Behura v. Union of India* has been referred to in legal commentaries to evaluate the judiciary's expectations from child rights institutions. These documents reveal the judiciary's dependence on commissions as advisory bodies. The present work utilizes such judicial interpretations to explore the restricted legal authority given to NCPCR reports.

RELEVANCE OF THE STUDY

This study adds to the discussion on institutional accountability in child protection mechanisms. It is essential to scrutinize NCPCR critically when child rights violations continue

to be exposed even after the country has a comprehensive legal framework for child protection. The research will be of interest to legal scholars, policymakers, and practitioners in the field of child rights advocacy.

HYPOTHESIS

Due to structural limitations, lack of binding authority, and institutional constraints, the Commission has not been able to leverage its statutory mandate and quasi, judicial powers to effectively enforce child rights.

RESEARCH QUESTIONS

1. Are the statutory powers provided to the National Commission for Protection of Child Rights enough to guarantee the effective protection and enforcement of child rights in India?
2. In which ways have the judiciary interpreted and concerted the role of the NCPCR in cases of child rights violations?
3. What institutional and functional challenges are the main hurdles in the effective working of the NCPCR?

RESEARCH METHODOLOGY

This study is based on a doctrinal research methodology. To study the legal framework that governs the NCPCR, primary sources like statutes, constitutional provisions, and judicial decisions have been investigated. To understand the working and problems of the Commission, secondary sources such as books, research articles, Law Commission Reports, and reports by institutions like UNICEF have been referred to. The study is descriptive and analytical, which aims at a critical evaluation of the effectiveness of the NCPCR by combining the legal provisions, judicial interpretations, and academic commentaries.

ANALYSIS OF RESEARCH QUESTIONS

Research Question 1: Whether the statutory powers granted to the NCPCR are sufficient to ensure effective protection and enforcement of child rights in India?

The National Commission for Protection of Child Rights¹ has at its disposal the powers of a civil court as per Section 14 of the Commissions for Protection of Child Rights Act, 2005, which includes the authority to summon and interrogate witnesses on oath as well as to

¹ Commissions for Protection of Child Rights Act, No. 4 of 2006, §§ 13–14, India Code.

requisition public records. These official documents indicate that the Commission has the characteristics of a strong quasi, judicial body. Yet, upon a closer legal scrutiny, one finds that these powers are mostly procedural and investigative instead of enforcement, oriented. The Commission has the capacity to make an inquiry and to give advice on violations but does not have the power to issue binding orders or to penalize those who do not comply. The fact that the Commission's advice is not binding considerably undermines its power. The matter of implementation rests solely with the executive agencies, which may put off or refuse to comply for reasons of either bureaucratic inertia or political expediency. The Law Commission of India has similarly pointed out that the child rights commissions without an enforceable mandate are hardly more than advisory bodies at best and, therefore, incapable of functioning as effective enforcement mechanisms.² Therefore, even though the statutory framework is seemingly extensive, the lack of a coercive power means that the role of the NCPCR in guaranteeing the actual protection of child rights is a restricted one.

Research Question 2 : In which ways have the judiciary interpreted and concerted the role of the NCPCR in cases of child rights violations?

The Indian judiciary has always viewed the NCPCR as an expert statutory body responsible for the protection of child rights. The courts have often referred to the reports and recommendations submitted by the Commission to get a better understanding of ground realities and system failures. The Supreme Court in *Sampurna Behura v. Union of India*³ highlighted the necessity of effective institutional child protection mechanisms and gave directions based on the suggestions of child rights organisations.

The judicial dependence on NCPCR is still persuasive rather than binding. The courts, instead of giving the Commission's findings a determinative value, have treated them as supplementary material to be used in judicial decision, making. This approach is consistent with the constitutional principle of the separation of powers but at the same time, it maintains the advisory role of the NCPCR. Therefore, the judiciary's respectful but cautious recognition does not effectively increase the Commission's enforcement capacity.

Research Question 3: What institutional and operational hurdles are obstructing the smooth delivery of the NCPCR mandate?

² Law Commission of India, 205th Report on Proposal to Amend the Commissions for Protection of Child Rights Act, 2005 (2008).

³ *Sampurna Behura v. Union of India*, (2018) 4 SCC 433.

The realization of the NCPCR mandate has been inhibited by several institutional as well as operational challenges. Firstly, the recruitment of the Chairperson and Members lies entirely with the Central Government, thus raising issues related to the institutional autonomy and the possibility of political influence. The existence of such perceptions can diminish the standing of the Commission as an impartial watchdog.⁴ Secondly, limitations in resources have a major impact on the level of performance. The Commission's effectiveness is constrained by insufficient budget, lack of staff, and logistical difficulties which hamper its ability to make regular inspections and to monitor the implementation of the Court's orders throughout the country.⁵ Thirdly, differences in the mandates of the State Commissions for the Protection of Child Rights often result in poor coordination and the erosion of the sense of responsibility. On top of it, accusations of favouritism in interventions and inconsistency in the exercise of suo moto powers have led to a further decline in public confidence.⁶ A report by UNICEF and comments from academics have revealed that statutory child rights bodies without transparency, independence, and sufficient resources become ineffective in carrying out their mandate. All these factors together detract from the institutional strength of the NCPCR in playing its role of a vigilant protector of child rights.

CONCLUSION

The National Commission for Protection of Child Rights was meant to be the foundation of India's child protection system, basing on constitutional directives and international obligations through the UN Convention on the Rights of the Child. In legal terms, the establishment of the NCPCR indicates a clear change in the child rights perspective from a welfare, oriented approach to a right, based one. In this new model, children are seen as individuals with rights, not as mere recipients of state charity. Nonetheless, this study argues that the setting up of a statutory institution is not enough to guarantee effective protection at the grassroots level.

The research points to a significant divergence between the role assigned to NCPCR and the difference it has made. The Commission, which has been granted quasi, judicial powers, is nevertheless powerless to issue binding orders or take any coercive action, thereby reducing its status. The judiciary's decision to treat the NCPCR as a body whose opinions are to be taken into consideration rather than as an authoritative one is also another factor that reaffirms its

⁴ Smriti Thukral, Institutional Framework for Child Rights Protection in India, 58 J. Indian L. Inst. 312 (2016).

⁵ UNICEF India, *Assessment of Child Protection Systems in India* (2015).

⁶ Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights* 112–15 (Oxford Univ. Press 2017).

character as an advisory body. Besides, the Commission's credibility and effectiveness are weakened by various institutional issues such as lack of independence in appointments, shortage of resources, poor coordination with State Commissions, and the practice of interventions being selective, which have been the subject of allegations.⁷

It would be both legally and morally wrong, however, not to consider the NCPCR as a relevant organisation at all. The Commission has continuously documented the failures of the system, shaped the policy making process and raised public, and legal awareness of child rights issues. Therefore, the problem is not with the idea of the NCPCR but with its flawed architecture and limited functioning.

RECOMMENDATIONS

Given the foregoing reasons, several proposals are made below to improve the effectiveness of NCPCR:

1. **Grant Limited Binding Authority:** The Commissions for Protection of Child Rights Act, 2005 should be amended to grant limited binding authority to the NCPCR recommendations in cases of child rights violations of a serious nature, with the condition that such decisions are subject to judicial review.
2. **Ensure Institutional Independence:** The procedure for selecting the Chairperson and Members should be disclosed, made more independent and less executive dominated by including judicial members or representatives from civil society in the selection body.
3. **Strengthen Coordination Mechanisms:** Legally binding yet flexible arrangements should be developed by the NCPCR and State Commissions to eliminate conflict of jurisdiction issues, thus ensuring functional coordination.
4. **Enhance Resources and Capacity:** An adequate budget, staff with new skills and establishing branch offices locally are the basic pre, requisites for the Commission to undertake regular monitoring and initiate the follow, up enforcement actions.

⁷ Smriti Thukral, Institutional Framework for Child Rights Protection in India, 58 J. Indian L. Inst. 312 (2016).

