

Minutes of the Consultation on
Proposed Prevention of Offences Against the Child Bill, 2009
New Delhi, Vigyan Bhawan Annexe, Hall –A
Tuesday, 19th January 2009

The National Commission for Protection of Child Rights (NCPCR) organized a Consultation on the proposed "Prevention of Offences Against the Child Bill, 2009" in New Delhi's Vigyan Bhawan Annexe on 19th January 2009, as the Ministry of WCD had solicited the comments on the draft Prevention of Offences Against the Child Bill, 2009. Legal Experts, Child Rights Activists and Concerned Government Officers among others took part in the day-long deliberation and shared their comments/views on the Bill (List of Participants-Annexure- I).

While welcoming the participants Shri Lov Verma, Member Secretary, NCPCR said that there were many Laws and Acts ensuring the care and protection of the children and their rights. However, there is lots of duplication and overlapping in the laws. He inquired if the proposed new law "Prevention of Offences Against the Child Bill, 2009" could fill the gaps and make the new law a comprehensive one. He solicited the help of media for wider dissemination of the proposed law.

Shri D.K. Sikri, Secretary, MWCD in his address informed that his Ministry deals with women and children, who are both vulnerable at every stage. The proposed "Prevention of Offences Against the Child Bill, 2009" was timely though its initiation goes back to 2007.

Mr. Sikri felt that it was not the implementation of the law, but how we understood and dealt with vulnerability that mattered. Children are often exposed to physical harm and abuse in one or the other form and the case of Ruchira is a prominent one in recent times. Quoting the study conducted by the MWCD on violence against children he informed that every third child is physically abused. He urged the participants to give their suggestions through the consultation initiated by NCPCR and arrive at recommendations that would inform the Ministry to take appropriate action.

Dr. Shantha Sinha, Chairperson, NCPCR in her address reflected on the different forms of violence against children from the three years experience of the Commission. She stated that

violence on children is all pervasive across class, community, religion and region and prevalent in public places, work places as well as at home.

About the definition of child with regard to age, she said that 18 years as prescribed by UN Convention of Child Right (CRC) and also the JJ Act must be taken into consideration. She felt the need for a comprehensive child policy that is based on a rights based approach and in the best interest of children. She mentioned that the legal framework must flow from the policy.

Dr. Sinha emphasized the need to look at child friendly processes and jurisprudence in order to protect the child and her dignity. Considering the difficulties in producing evidence in relation to acts of violence on children, she emphasized that the burden of proof has to be on the offender that he has not caused violence on the child or on the employer concerned that he has not engaged the child in work and as a bonded labour. She reiterated that the law should have adequate penal provisions and that it must include other entitlements of the child for rehabilitation and a life with dignity. Schools should be developed as a safe zone for children, who should prevent them from armed conflict, child labour and protect them from abuse and violence.

Presentations

1. Shri M P Sharma, JSO, NCRB "Crime Against Children"

The NCRB definition of a child is one who is below 18 years. NCRB collects 2 categories of data, i.e., cases registered under IPC and Special and Local Laws (SLL).

Based on the data collected from 35 States/UTs and 35 megacities, the NCRB study showed that the major crimes committed against children are murder, foeticide, abandonment, kidnapping (for ransom, slavery and sexual exploitation), etc.

The data shows that a total of 22500 children were the victims of one or the other forms of crimes in 2008. Madhya Pradesh has registered the highest number of cases against children which was approximately 6 for one lakh population (the detail presentation is given in Annexure- II).

2. Ms. Bharti Ali & Ms. Enakshi Ganguli, Haq Centre for Child Rights "Definition and Scope of 'Offences' Against Children"

Ms Ali and Ms Ganguli mentioned that the objective of the proposed Offences against Child Bill, 2009 should go beyond prevention. They felt that there was a need for a new bill with necessary amendments to the Indian Penal Code, Cr.PC and the Indian Evidence Act, 1872 to be included in the legal framework on offences against children. The age of child should be 18 years, and amendments are to be made in all other child related legislations to this effect. Further they maintained that there was a need to ensure that all the laws relating to children adhered to the principle of protection of child rights.

3. DISCUSSION

Major points came in the discussion on Prevention of Offences against the Child Bill, 2009:

1. Legal framework

- Need for a separate comprehensive law after flagging off the gaps in the existing Laws and Legislation and amendment of the IPC, CrPC and other laws.
- Need for criminal prosecution against the offenders.
- Uniform definition of the child as 18 years.
- A separate law on sexual offences as available in UK
- The proposed law must be short and understandable for the common people.
- Amendments to IPC and CRPC to make them substantive and suitable by devising the law on child abuse where the child needs to be believed and evidence is taken with caution.
- Develop guidelines for enforcement and implementation of laws and not just depend on FIRs as it is the language of the police.

2. Policy Framework

- Draft a comprehensive code on child rights keeping in view the key areas like the Right to Education, Juvenile Justice, criminal set of law, family law, Juvenile law, etc. A single code has to be drawn and sub-elements can be traced from the existing laws and amendments as necessary.
- The Juvenile Justice (Care and Protection of Children) Act, 2000 and amendment 2006 addresses many issues relating to child abuse and exploitation. However, its

implementation across the country is uneven. It needs to be implemented in letter and spirit at every level throughout India.

- Ensure implementation of the right to education and prohibit any form of employment of children.
- Mechanism to register abuse/offence and need for upholding the social and economic rights of the children including psychological support.
- Prohibition of all forms of corporal punishment.
- Proper training to the Police to deal with child care and enable them use appropriate law
- Sensitize the medical practitioners.
- Need for standard operating procedures.
- Prevention and social mobilization are as important as law enforcement.

Sexual Abuse

- Need for a comprehensive law incorporating the judgments and directives of the Hon'ble Supreme Court and Hon'ble High Courts instead of amending the existing laws.
- The existing Indian laws do not understand child sex abuse, particularly Section 377 for unnatural offences. There is a need for comprehensive law to fill all the gaps through appropriate amendments including protection, prevention, medical examination and procedural steps.
- Need for a law that includes sodomy, male child sex abuse, pedophilia and extradition of foreign tourist offenders
- Need for inclusion of rehabilitation, counseling/support to the children sexually assaulted, molested or abused in the family and police station.
- Need for training of officials dealing with the child offence cases by the judicial academy including the police .
- Need to give confidence to the parents to come forward to register a case and create conditions to enable them do so.

Recommendations:

The consultation unanimously reached a consensus and recommended the following:

1. Evolve a comprehensive National Policy on Children which includes updating the National Policy for Children 1974.
2. Instead of a general legislation covering all offences against children, focus on a Bill for Sexual Offences against Children. The reason being there are already existing laws covering most offences against children, which would definitely require amendments. There is presently nothing in place which specifically addresses child sexual abuse and its consequences.
3. To bring appropriate amendments in all existing laws relating offences against children and ensure that a right based perspective is adhered to in all these legislations.
4. Amend relevant sections of the Indian Penal Code, Criminal Procedure Code and Evidence Act, to ensure that children are not further victimized and justice is rendered in a time bound manner.
5. In order to harmonize and bring about a cohesive legal framework, all the above actions must be done simultaneously and not sequentially. The above are all interlinked and have to be read together, to avoid overlap and contradictions.

The representatives of HAQ, RAHI, TULIR, UNICEF, CHILDLINE and IMPULSE will constitute the Committee to work on Sexual Violence Against Children Bill, which may be finalised by June 2010. Comments will be invited from various stakeholders with specific timeline, followed by a National consultation. Consultation will involve the lawyers, judges, police (JJB and CWC), education institutions, medical practitioners and parents. The committee looking into the task will go through the drafts prepared by the Childline Foundation India and the Goa and Kerala Bills. Though there will be no direct interaction with the children, there could be indirect consultation with organizations working on child issue.

List of Participants in the Consultation on
Proposed Prevention of Offences Against the Child Bill, 2009,
New Delhi, Vigyan Bhawan Annexe, Hall –A, Tuesday, 19th January 2009

1. Shri D.K. Sikri, Secretary, Ministry of Women and Child Development, GOI.
2. Dr. Shantha Sinha, Chairperson, NCPCR, New Delhi.
3. Ms. Dipa Dixit, Member, NCPCR, New Delhi.
4. Mr. Lov Verma, Member Secretary, NCPCR, New Delhi.
5. Prof. Babu Mathew, Country Director, Action Aid- India, New Delhi.
6. Dr. R. Venkata Rao, Professor of Law and Vice Chancellor, National Law School of India University, Bangalore.
7. Shri M.P. Sharma, JSO, National Crime Records, New Delhi.
8. Ms. Harleen Walia, UNICEF Consultant to MWCD, New Delhi.
9. Ms. Bharti Ali, Co- Executive Secretary, Haq Centre for Child Rights, New Delhi.
10. Ms. Enakshi Ganguly, Co- Executive Secretary, Haq Centre for Child Rights, New Delhi.
11. Ms. Praveen Kumari, Director (SR), Ministry of Home Affairs.
12. Ms. Sunita Anand, A.L.C, Ministry of Law and Justice Department, Legislative Department.
13. Ms. Kusumlata, Crime Against Women Cell, Delhi Police, New Delhi.
14. Shri Sudhir Yadav, Joint Commissioner of Police, New Delhi.
15. Dr. Sarita Sarangi, Member, DCPCR, New Delhi.
16. Mr. O.P. Vyas, Assistant Registrar, NHRC, New Delhi.
17. Ms. Karuna Bishnoi, Communication Specialist, UNICEF, New Delhi.
18. Mr. Jose Bergua, Head (Child Protection Division) UNICEF, New Delhi.
19. Ms. Kiki Van Kessel, Child Protection Specialist, UNICEF, New Delhi.
20. Shri Sony Kutty George, Child Protection Officer, UNICEF, New Delhi.
21. Ms. Suruchi Pant, Regional Representative, UNODC Regional Office for South Asia, New Delhi.
22. Ms. Swati Rana, Regional Representative, UNODC Regional Office for South Asia, Delhi.
23. Leelavati, Coordinator, Legal Cell, National Commission for Women, New Delhi.
24. Udiksha Batra, Lawyers Collective, Child Right Initiative, Delhi.
25. Ms. Kiran Jyoti, Director, Child Rights, HRLN, New Delhi.

26. Ms. Sarita Santamaria, Children's Rights in Goa, Goa.
27. Shri Rajib K. Haldar, Additional Director, CINI, West Bengal.
28. Ms. Vidya Reddy, Secretary, TULIR, Chennai.
29. Ms. Vrinda Grover, Director, MARG, New Delhi.
30. Mr. Mohd. Aftab, Save the Children, New Delhi
31. Ms. S. Vidya, Equations, Bangalore
32. Prof. Asha Bajpai, Centre for Socio Legal Studies and Human Rights, TISS, Mumbai.
33. Ms. Bharti Sharma, Former Chairperson, Child Welfare Committee, New Delhi.
34. Ms. Anuja Gupta, RAHI Foundation, New Delhi.
35. Ms. Jaya Tiwari, NAZ Foundation, New Delhi
36. Ms. Hasina Kharbhih, Impulse NGO Network, Shillong, Meghalaya.
37. Ms. Nicole, Childline Foundation India, New Delhi.
38. Mr. Nishith, Childline Foundation India, Mumbai.
39. Mr. Vipin Bhatt, HAQ Centre for Child Rights.
40. Mr. B K Sahu, Registrar, NCPCR, New Delhi.
41. Mr. M S Gill, Dy.SP, NCPCR, New Delhi.