

**Foundation Day Address
(5 March 2011)**

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1. Hon'ble Minister Ms. Krishna Tirath, our honoured Chief Guest, Ms. Sharmila Tagore and Mr. Sikri, Secretary, MWCD, who were kind enough to accept our invitation at such a short notice on this occasion as guests of honour, and Dr. Shekhar Seshadri, we are indeed honoured to have you with us as our first speaker on the occasion of Foundation Day and friends.

Looking back, the four years of NCPCR has been a journey into the lives of children telling us constantly that something unfair is happening to our children and this has to be corrected. It requires tremendous inner strength to face these children, who grapple every day to survive – the interaction is humbling, to say the least. Yet, the sparkle in the eyes of the one year old malnourished baby who weighed no more than six kilos wanting to live, has given us the strength to carry on. Since the Commission is their legitimate voice and claim, we are accountable to them.

Status of children and Institutions for Children

2. We have a child population of 420 million in our country in the age group of 0-18 years and therefore India manages the largest network of State run public institutions in the world today. It has the largest immunization and nutrition program with 1.4 million anganwadi centers covering over 80 million children. It reaches out to the maximum number of 143 million children in the 6-14 years age group in over 9 lakh schools with 36 lakh school teachers. It covers the largest mid day meal program in schools covering 131.69 million children and addresses children from the most vulnerable communities such as the scheduled caste and scheduled tribes through affirmative action as mandated by the Constitution of India and provides a range of targeted initiatives and infrastructure such as scholarships, residential schools, hostel facilities and so on.

3. However, as a large country with diversity in economic attainment, political and institutional histories of the States, and cultural specificities, the quality of services is not consistent and continues to represent a key challenge in ensuring equal access to their fundamental rights by all children. While there have been gainful achievements in some areas in the country with some States, districts and blocks doing better than the rest on the child development indicators of health, nutrition, education and other entitlements- these continue to be abysmally poor in some pockets for certain classes of children and more disadvantaged communities.
4. Thus whilst bringing advances in many areas, it has also intensified the dangers to childhood and has been extraordinarily harsh to many children in our country. More and more children are vulnerable and marginalized today. Having no food to eat, and little or no health support, they live precariously, experiencing hunger daily and suffer malnourishment, their lives claimed tragically by infant and child mortality. Older children are being trafficked and are working as migrant child labor, usually away from their homes. Children travel long distances across States. Networks of sourcing children from one end of the country to another exist across India, from Manipur to Chennai, Bihar to Punjab, Kerala, Rajasthan, Orissa to Mumbai and Gujarat. On their way to work and even in the work places, it is an undisputed fact that children are subject to abuse, torture and gross exploitation. Those who remain in their own communities and are at work are also victims of cruel market forces and lack access to State services and protective schemes. Child marriages, child trafficking and discrimination of girls remain crucial challenges. There is a growing number of children being affected and infected with HIV and AIDS and displacement due to natural disasters and civil unrest, representing a new generation of hazards facing the child in this country.

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

NCPCR's Interventions

5. All through care has been taken to listen to children, child defenders and voices from the ground, responding to direct complaints and taking *suo moto* cognisance of violation of child rights and to bring their concerns to the establishment at all levels. Mechanisms include constituting thematic working groups; consultations through seminars, public hearings, workshops, conferences; highlighting issues relating to children for the Judiciary and identifying the gaps in the system in order to obtain appropriate orders to protect children and assure them of all their entitlements, and so on.
6. **State visits:** The Commission in the last four years visited 24 States and 4 Union Territories in the country. During the visits it was witness to the predicament of children and the lack of access to their entitlements. The Commission was also struck by the relentless and anonymous service of some officials at the sub-district and district levels, the anganwadi worker, school teacher, probation officers, police and revenue officials, who work against all odds to ensure that justice is meted to children. They are indeed the pillars of the system and keep the hope in the State going. It also gave an opportunity to appreciate the work of the local volunteers for bringing about change in the lives of children. Hearing the experiences of some gram panchayat members was inspirational with implications for institutionalizing monitoring of child rights through a process of deepening of democracy.
7. **Public Hearings** have become an important tool for conducting an open and transparent enquiry where voices of children and their protagonists are heard in the presence of the NCPCR and senior officials of the government. The Commission has been moved by the heroic accounts of young children who repeatedly risked their lives to escape drudgery and solitude for freedom and liberation.

During the public hearing on child labour in cotton seed farming, the Commission gained insights into how large numbers of children migrating from Rajasthan to Gujarat, also work in ginning mills, textile factories, salt pans, brick kilns, etc. Their workload is very often heavier than that of an adult!

The NCPDR's public hearings on corporal punishment in Tamil Nadu revealed the insult and injustice meted out to children, driving some of them to attempt suicide and even commit suicide.

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

NCPDR's public hearings in Dantewada showed how vulnerable tribal children were victimized by all parties— and deprived of their basic rights to health, survival, food and nutrition, education and protection. It revealed the impact civil unrest can have on children.

These are only some examples of the public hearings the Commission held. In most of them, the numbers who attended were not less than 500 from the community. While it is difficult to gauge the response to all guidelines issued, there have been positive reports of action taken by the district administration. It must be stated that every such response has given energy to the Commission to do more.

8. Some Policy Recommendations:

i. Amendments to Child Labour (Prohibition and Regulation) Act 1986

From a rights based perspective, NCPDR recommended that the definition of 'child labour' be inclusive, recognize all forms of child labour as 'prohibited' and to include children up to 18 years of age in the definition of 'child labour'. The Commission called for a consonance between child labour law with the Act on 'Right of Children for Free and Compulsory Education-2009'

ii. Reforms in Juvenile Justice System

It was found there was a fundamental lack of recognition within the JJ system that:

- children in conflict with law are also children in need of care and protection;

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

Among its recommendations NCPDR has identified the need for the Juvenile Justice System to expand its coverage and reach to all categories of children, ensure professionalization of actors in the Juvenile Justice system, ensure fairness in line with child jurisprudential principles, operationalise non-institutional, alternate care provision and appropriate re-unification processes for children returning to parental care and so on.

iii. **Child Rights in Areas of Civil Unrest**

The Commission has enquired into the plight of children in areas of civil unrest and looked at the plight of children in relief camps in Dantewada in the State of Chhattisgarh, NC Hills District, Chirang District and New Bongaigaon District in the State of Assam, in Ashapara and Naisingpur camps at Kanchanpur in North Tripura District in the State of Tripura and Kandhamal in State of Orissa. It has taken up the issue of entitlements of children of migrant households who are seen as competing with local poor as in Khammam district in Andhra Pradesh. Although the State of Jammu and Kashmir does not fall under its purview, it made a visit to Baramullah, Kupwara and Srinagar to get a perspective on how children are affected by violence and the State's response to the same.

The Commission has seen how children are the worst affected in times of civil unrest and such displacement. Having no access to food, water, health care and basic amenities, they have suffered the most. Hunger and starvation leading to malnutrition is not uncommon. Children's education has been compromised resulting in school drop outs and a large number of children not attending schools at all. Older children have been left to fend for themselves and some of them have been caught in the web of illegal activities and even in armed conflict, having none of the options that come through literacy and education. Several of them have joined networks of trafficking as child labor and also for sex work. In all these areas the

NCPCR has also come across children who have lost link with their families and are even orphaned. Young girls have been victims of physical and sexual abuse. A policy document based on the Commission's visits and directives has been prepared by the Commission.

The Commission has also begun a Pilot Programme 'Bal Bandhu' in five States namely Andhra Pradesh, Assam, Bihar, Chhattisgarh and Maharashtra for protection of child rights through a process of social mobilization. The Programme is being supported by the Prime Minister's Office.

iv. Corporal Punishment

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

Considering that there is a wide societal acceptance for corporal punishment as normal, the Commission recommended a campaign where children, parents and child defenders alike gain confidence to speak up against the practice of corporal punishment in schools and other institutions. Further it recommended that every school, including hostels, JJ Homes and shelter homes has a forum for children to express their views and if available involve an NGO. It suggested that there be a complaint box in each school, where complaints, even if anonymous, are entertained. The Commission also indicated monthly PTA meetings are held to review the complaints, and they are encouraged to act immediately on any complaints made by children without postponement of the issue and wait for a more grievous injury to be caused.

v. Child Abuse and Sexual Offence

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

Considering the social pressure and prevalent taboos most often sexual offence goes unreported and is under wraps. The victim is silenced because of the power imbalance between the perpetrator of crime and the child. Children who are very young are not in a position to articulate horror, and those who know that something is very wrong, often do not have spaces to be heard. It is only when an adult notices the change in behaviour of the child and takes courage to question that the first step of registration of complaint occurs. However, the procedures for rendering justice at every stage, disrupt the recovery and healing process of the child. At every step there is a challenge, making it impossible to take the case to its logical conclusion

The criminal justice administration system is primarily geared to deal with adults and the investigation of crime is entrusted to the police. Therefore the Commissions' emphasis has been on introducing elements of child jurisprudence in the 'best interests' of safeguarding and protecting child victims and witnesses.

9. Monitoring Right to Education Act

NCPCR has been mandated to monitor the implementation of the Right to Education Act that has been enacted in 2009. The RTE Act is historic as it makes it a State obligation to provide for free and compulsory education to every child of the age of 6-14 years in a neighbourhood -a welcome step.

The Commission has held public hearings in Rajasthan, Madhya Pradesh, and Tamil Nadu. In view of its effectiveness, many more States are preparing themselves for such hearings. It is

in the process of creating accountability mechanisms at the local level for the upholding of the right to all children and for ensuring speedy resolution of grievances and disputes. It has also begun introducing a system of social audit at the block and district level in 250 panchayats in 10 States to monitor children's access and retention in schools as well as the school infrastructure, teacher attendance and other entitlements of children. It has been receiving complaints on specific violations of the provisions of the Act and responding to them.

State Representatives with high repute have been identified who will in turn network with hundreds and thousands of child defenders at the grass root level.

10. Responding to Complaints

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

The Commission's *suo moto* cases have been mainly from print and electronic media. It acknowledges the role of media, local, State as well as National, in reporting cases of violations and also generating a public debate on the matter. Utilizing its authority under law, it has summoned officials to explain why action has not been taken in spite of repeated reminders and fixed time lines for action to be taken.

11. Seeking Judicial Intervention & Orders (i.e. Supreme Court and High Court) towards Child Protection and Child Rights

The Commission has successfully interfaced with the higher Judiciary to ensure that child rights issues are addressed, children are protected and assured of all their entitlements and the laws and systems are effectively implemented. In several matters, the Supreme Court and High Court(s) have asked the Commission to provide inputs and guidance from a child rights angle and/ or to provide workable action plans towards effective implementation of laws and child protection. One such example is the Child Labour Action plan, prepared by the Commission, on the request of the Delhi High Court, on which effective orders were eventually passed. As a result, the Delhi Government was directed to adopt the said Action Plan and provide periodic reports to the High Court on its implementation. Likewise, on issues relating to reforms in the Juvenile Justice System and status of homes for children; child trafficking; children of prisoners and so on.

Conclusion

In a way, the four years of the Commission have shown that ending all forms of violence on children, stopping child labour, corporal punishment, child abuse and discrimination is possible. Moving away from a welfare approach to a rights based perspective has indeed been the first important step. To actualise rights of children entails moving further on to considering yours, mine and all our children as same and as equal. Such a change in values would have a lasting implication for the way in which we regard our children and plan for their well-being.

- We would then not argue whether provisioning of services for children is cost-effective and sustainable.
- We would not set 'doable targets' by addressing some children first as a priority and keeping other children waiting for their turn.

- We would not say that it is impossible to address all children and their needs at one go and thus draw a hierarchy of children and their suffering- those at risk, hard to reach children and hardest to reach children, children who are vulnerable and most vulnerable children needing urgent action and so on. We would provide the best for every child without discrimination and pay attention to those requiring additional services with affirmative action
- We would consider the issue of practicality from the child's perspective and not allow her to suffer from hunger, ill-health, lack of education or loss of dignity.
- We would also not draw a distinction between short term requiring immediate action vis a vis long term goals, fully realising that rights are to be enjoyed every day of their lives . Missing out on access to basic entitlements even for one day as children can cause damage to them in the long run .Childhood comes only once. A lost childhood can never be regained.
- We would take uncompromising stands in favour of all our children and their rights.

Embedded in a value system of equity and justice for protecting children's rights, the State obligation for creating institutions, structures and processes to reach out to each and every child is then actualised. This has profound impact on children, offering a new set of traditions, cultures and values that would eventually bring transformation in all our lives as well.