



REVISITING THE NATIONAL COMMISSION FOR CHILD RIGHTS

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Abstract

The purpose of research is study the deals with appeal, advisory jurisdictions to the National Commission for Protection of Child Rights in India. This study explores the powers for the National Commission for Protection of Child Rights on superintendence and transfer of cases. By identifying the political intervention in during the appointment of chairman and its members in the National and State Commission for Protection of Child Rights and eliminate the same by way of necessary amendment in the law, which has to provide the change in structure of the selection committee and requirement of constitutional status to the National and State Commission for Protection of Child Rights.

Introduction

Many of provisions have been introduced in Constitution of India to ensure dignity and self respect to the child rights at large. Article 21 A of the Constitution deals with the Right to Education: The State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State, by law, may determine. Article 24 of the Constitution says that Prohibition of employment of children in factories, etc. No child below the age fourteen years shall be employed in work in any factory or mine or engaged in any other hazardous employment. Article 39 of the Constitution declares that the State shall, in particular, direct its policy towards securing:- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

The National Commission for Protection of Child Rights (NCPCR) was set up in March 2007 under the Commission for Protection of Child Rights Act, 2005, an Act of Parliament. The Commission's Mandate is to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms 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. Ten years had elapsed since the National Commission for Protection of Child Rights Act came into force in India. Various studies have been made so far, especially in analyzing on Child Rights. But, a detailed study on the National Commission for Protection of Child Rights, still remains unexplored. In these circumstances, it is appropriate to examine the same.

Human Rights Institution

The term National Human Rights Institution has been defined as a body which is established by a government, under the constitution, or by law, or decree, the functions of which are specifically defined in terms of promotion and protection of human rights. It can refer to number of different institutions: human rights commission or commissioners, ombudspersons, or hybrid bodies, etc.ⁱ The Chairperson of the National Commission for Minorities, the National Commission for the Scheduled Castes, the National Commission for the Scheduled Tribes and the National Commission for Child Rights will be ex-officio members of the National Human Rights Commissionⁱⁱ. Therefore, it is very clear that National and State Commissions for Protection of Child Rights are established under the Commission for Protection of Child Rights Act, 2005, which are deemed to be human rights institutions.

At the United Nations sponsored first International Workshop on National Institutions for the Promotion and Protection of Human Rights (Paris 7-9 October 1991), a detailed set of principles on the status of national institutions was developed. These Principles, commonly known as Paris Principles, subsequently endorsed by the General Assembly (resolution 48/134 on 20 December, 1993) and have become the foundation for establishment and operation of the National Human Rights Institutions.ⁱⁱⁱ

The Paris Principles can be divided into four parts: (a) Competence and responsibilities, (b) Composition and guarantees of independence and pluralism (c) Methods of operation and (d) Additional principles. India has agreed Paris Principles on National Human Rights Institutions and signed. Hence, National Commission for Child Rights and State Commissions for Child Rights have adopted the Paris Principles.

Selection Committee

According to the Commission for Protection of Child Rights Act, 2005, Chairperson and other members of the National Commission shall be appointed by Central government. The Chairperson and Members of the State +Commission for Protection of Child Rights shall be appointed by the State government.



The composition of the selection committee for Chairperson and Members of the commission have political involvement, which against the independent appointments quoted in the Paris Principles. The selection committee shall not have political people. Chairperson and other members of the tribunals like customs, railway claims, income tax, etc. are appointed by the President on the recommendations of a Committee composed of the Chief Justice of India or his nominee, who is a Judge of the Supreme Court as Chairman, secretary of the law ministry and secretary of the concern department as members in India.

Likewise, Chairperson and other members of the National Commission have to be appointed by the President on the recommendations of a Committee headed by the Chief Justice of India or his nominee, who is a Judge of the Supreme Court as Chairman. Chairperson and other members of the State Commission have to be appointed by the Governor of the State on the recommendations of a Committee headed by the Chief Justice of High Court concern as Chairman. This type of change in the selection committee for the chairman and members of the human rights commissions shall have independent appointment system without political intervention.

Jurisdiction

Original jurisdiction is distinguishable from appellate jurisdiction, which is the power of a court or commission to hear and enter judgment or recommendation upon a case brought for review. National Commission for Protection of Child Rights already have original jurisdiction as per the Commission for Protection of Child Rights Act, 2005. The power to transfer the suitable cases to the State Commissions has to provided to the National Commission for easy access and speedy disposal.

Commission for Protection of Child Rights Act, 2005, has to provide a provision to appeal against the order of the State Commission before the National Commission. The National Commission must have original and appellate jurisdiction. This will provide a chance for the victims to fight against the state intervention in the State Commissions. The section 3(3) of the Commission for Protection of Child Rights Act, 2005,says that the office of the national commission shall be at Delhi. The regional benches of the National Commission has to be established to hear the appeals against the State Commission, which will be convenient for the victims of human rights violations. It may be noted that here, benches of high courts are established in many States and there is a demand to establish regional benches of Supreme Court also.

The advisory function of the Inter-American Court of Human Rights enables it to respond to consultations submitted by agencies and member states of the Organization of American States regarding the interpretation of the American Convention on Human Rights or other instruments governing human rights in the Americas. It is also empowered to give advice on domestic laws and proposed legislation, and whether or not they are compatible with the Convention's provisions. Advisory powers have to be provided to the National Commission for Child Rights as follows: If at any time it appears to the State Commission that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the National Commission upon it, he may refer the question to that Court for consideration and the National Commission may, after such hearing as it thinks fit, report to the State Commission its opinion thereon

General Powers

According to the Article 227 of the Indian Constitution, every High Court shall have superintendence over all courts and tribunals throughout the territories interrelation to which it exercises jurisdiction, without prejudice to the generality of the foregoing provisions, the High Court may (a) call for returns from such courts; (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts. National Commission for Protection of Child Rights has no power to superintendence over all State Commissions. The power of superintendence over all the State Commissions is essential for National Commission. It will lead to the uniformity in the rules, forms, books, entries and accounts, etc in the State Commissions.

Article 141 of Indian Constitution provides that any order of the Supreme Court shall be binding on all the lower courts of India. The orders of the National Commission for Protection of Child Rights have to be made as bindings on all the State Commissions. According to the Commission for Protection of Child Rights Act, 2005, National Commission has no power to transfer of certain cases, where cases involving the same fact or question of law or if it deems it expedient so to do for the ends of justice, transfer any pending case before any State Commission to National Commission or any other State Commission. This is a noticeable point that National Commission has no control on the State Commissions, which is not good quality for administration of human rights justice.

Article 139A of the Constitution Of India deals with transfer of certain cases as follows: (1) Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or an application made by the Attorney General of



India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself: Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court from which the case has been withdrawn, and the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment . (2) The Supreme Court may, if it deems it expedient so to do for the ends of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court^{iv}.

Likewise, power of transfer the certain cases have to be provided to the National Commission for Child Rights as follows: If the National Commission for Child Rights is satisfied that a case pending in a National Commission, it shall withdraw the case and may (a) either dispose of the case itself, or transfer any State Commission to any other State Commission.

Constitutional Status

Article 14 of constitution of India ensures equality before the law or the equal protection of the laws within the territory of India. This is a very important provision which provides equal legal protection to Child Rights against any child rights based crime. This provision also paves way for the introduction of various laws and acts to ensure protection and enforcement of legal rights of Child Rights in India.

Article 15 of constitution of India ensures that no one should create any sort of discrimination only on the grounds of religion, race, caste, sex or place of birth or any of them within the territory of India. At the time of independence there was lots of discrimination in India against Child Rights which gradually abolished after introduction of article 15. As per article 15(3) of the constitution state has the authority to make any special provision for Child Rights and children. Article 16 of constitution of India ensures equal employment opportunity to every citizen of India. As per article 16 there should not be any discrimination in respect of employment opportunity under the State only on grounds of religion, race, caste, sex, descent, and place of birth, residence or any of them.

The National Commission for Scheduled Castes, National Commission for Scheduled Tribes and National Commission for Backward Classes have constitutional status. But, National and State Commissions for Protection of Child Rights are not have such a status. Many countries have given constitutional status for National Child Right's Rights Institutions. The Constitutional status will give more teeth for the National Commission for Child Rights including independence and financial autonomy, etc. An Article has to be inserted in the constitution to provide constitutional status National and State Commission for Protection of Child Rights.

Conclusion

The study found that National and State Commissions for Protection of Child Rights is one of the human rights institutions. To strengthen the National and State Commissions for Child Rights of India, the following measures are essential.

- a. A change in the selection committee for the chairman and members of the National and State Commission for Child Rights is essential to provide independent appointment system without political intervention.
- b. The orders of the National Commission for Protection of Child Rights have to be made as bindings on all the State Commissions. The power to transfer the suitable cases to the State Commissions has to provided to the National Commission for Protection of Child Rights.
- c. National Commission for Child Rights Act has to provide a provision to appeal against the order of the State Commission before the National Commission. The regional benches of the National Commission have to be established to hear the appeals against the State Commission.
- d. Advisory powers have to be provided to the National Commission for Protection of Child Rights. The power of superintendence over all the State Commissions is essential for National Commission. The power of transfer the certain cases have to be provided to National Commission.
- e. An Article has to be inserted in the constitution of India for the National Commission for Protection of Child Rights by way of amendment to provide constitutional status. It is duty of the parliament to make needful amendments in the existing Commission for Protection of Child Rights Act, 2005, to strengthen the Child Rights human rights.

ⁱ Mashood A. Baderin, Manisuli Ssenyonjo(Ed.), *International Human Rights Law: Six Decades After the UDHR and Beyond*, Ashgate Publishing Company, Burlington, USA, 2010, p.306.

ⁱⁱ Asish Kumar Das and Prasant Kumar Mohanthy, *Human Rights in India*, Sarup & sons, New Delhi, 2007, p.175.

ⁱⁱⁱ David S. Weissbrodt, Connie de la Vega, *International Human Rights Law: An Introduction*, University of Pennsylvania Press, 2007, p. 346.

^{iv} <http://indiankanoon.org/doc/333273/>.