

**CHAPTER IV**  
**THE EFFORTS OF INDIA IN IMPLEMENTING THE**  
**OPTIONAL PROTOCOL ON THE SALE OF**  
**CHILDREN, CHILD PROSTITUTION AND CHILD**  
**PORNOGRAPHY (OPSC) TO COMBAT CHILD**  
**SEXUAL ABUSE (CSA) IN 2005 TO 2013**

In this chapter I write about the efforts that the Government of India has made in complying the OPSC as they have ratified it on 2005 to combat CSA in India. The discussion will be divided into four sub chapters; institution, policies, coordination, and resources. Each sector will be given at least one sample of efforts in certain year post ratification of India on OPSC in 2005. The samples will then be elaborated in details in order to understand the effort of India in complying the OPSC.

**A. The Preventive, Prohibitive, and Protective**  
**Institutions Establishment**

**1. Ministry of Women and Child Development**  
**(MWCD), 2006**

The MWCD was established in 30 January 2006 which was initially formed in 1985 as the Department of Women and Child Development under the Ministry of Human Resource Development. The separation of the MWCD from the Ministry of Human Resource Development had brought two significant child rights issues; early childhood care and child protection. However, other Ministries also contribute in dealing with specific programmes such as the abolishment of child labour, programmes and schemes for disabled children, children with HIV/AIDS, schemes for protection of children belonging to Scheduled tribes and Scheduled Castes and other minority communities (Thukral & Thukral, 2011).

## **2. National Commission for Protection of Child**

Under the Ministry of Women and Child Development (MWCD), National Commission for Protection of Child Rights was established in March 2007. It was formulated under an Act of Parliament in December 2005, Commission for Protection of Child Rights. This statutory body under the MWCD was assigned as written under the Constitution of India as well as the UN Convention on the Rights of the Child, all forms of administrative mechanisms, programmes, policies until laws must be consistent with the child rights perspective as written according to the two principles. The person who is from 0 to 19 years of age is considered as the child (National Commission for Protection of Child Rights (NCPCR), 2018).

In accomplishing its mandate, a rights-based perspective which later be implemented into the State Policies and Programmes in National level, becomes the task of the commission to visualize. It also consider responses from State level, to District, until Block levels to take care of the specialization and the strengths from each region. Comprehensive approach to the communities and the household are also conducted in order to reach every child. It also expects that by conducting such approach, a common experience that happen in the field will be a consideration to the higher level of authorities.

All factors which hinder the enjoyment rights of children caused by terrorism, general violence, chaos, natural disaster, domestic violence, HIV/AIDS, trafficking, abuse, torture and exploitation, pornography, and prostitution, by the Committee must be examined and then possible remedial measures must be recommended (NCPCR, 2018).

## **B. The Preventive, Prohibitive, and Protective Policies Making**

### **1. National Plan of Action for Children (NPAC), 2005**

The NPAC, 2005 is an extension of the NPAC 1992 and was initiated in 2002. Together with many inputs from the related Ministries, Departments at the Central Level, State/UTs Governments and Administrations, from the Institutions of the Government in welfare and development children, NGOs, Social Workers, Experts, and Public Opinion, the Plan was finally came to a comprehensive draft (UN Office of Drugs and Crime and Fovernment of India, 2007).

The NPAC, 2005 is expected to be implemented as the foundation to the overall national measures and into State Plans of Action for children including by all State agents such as executive and legislative bodies, quasi-judicial bodies, courts of law, and either by public or private institutions. There are at least four guiding principles used in the NPAC:

- I. Child is an asset and a person with human rights.
- II. Equality should be ensured through proposing issues related to gender bias, class, religion, race, and caste.
- III. The most disadvantaged, the poorest, the least served child should receive the highest priority through policies and programmatic interventions.
- IV. Providing the rights of children by recognizing the diversity of childhood reaching their rights and needs in any condition.

The NPAC, 2005 has determined its 12 key areas which are considered as the highest priority of the policy including; infant Mortality Rate reduce; Maternal Mortality

Rate reduce; malnutrition among children reduce; 100% civil births registration achievement; the achievement of 100% access in schools as a measurement to universalize the early childhood care and development and quality education for children; complete abolishment of female infanticide, female foeticide, and child marriage; water and sanitation improvement in both rural and urban areas, the addressing of children in difficult circumstances, ensuring the child security of all legal and social protection from abuse, exploitation, neglect, and all the forms of them, the abolishment of child labour, policies, programmes, and laws monitoring, review, and reform ensuring the rights, interest, and the protection of the children, and child participation ensuring deciding matters affecting their lives. The NPAC, 2005 is also divided into four sections as child survival, child development, child protection, and child participation.

Sexual exploitation and child pornography also becomes the concern of the Plan. It commits to protect and to prevent children from any kind of sexual exploitation and abuse including pornography. The strategies to reach the aims are undertaken into efforts such as; identifying the nature of CSA by conducting research, the establishment of Crisis Intervention Services and Centres aims to undertake the child victim, rising public awareness regarding to the effect of the abuse to sensitise parents, caregivers, and the community.

The sale of children and all forms of child trafficking on any purposes such as sexual purposes, marriage, begging, drug peddling, adoption, labour, sports and entertainment, and organ trade. The strategies are made into several efforts such as; the establishment of comprehensive information system related to trafficking routes and networking NGOs and other concerned agents committed in prevention, rescue, and rehabilitation of victims; the creation of regional coordination in preventing cross-border

trafficking; the establishment of Central and State Nodal Authorities to specialize the undertaking of trafficking issue; and the ratification of UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children in 2007.

## **2. Protocol on Inter State Rescue and Post Rescue Activities Relating to Persons Trafficked for Commercial Sexual Exploitation, 2007**

The protocol aims to address the gaps that found in rescuing trafficked person in India. Every state in India has its policy in undertaking trafficking issue. There is law called Code of Criminal Procedure 1973 (Cr. PC) that prescribes how a perpetrator of sexual abuse can be transferred from one state to another. However, there is no

***Figure 6 Categorization of 'rescued person' and the agency responsible to provide all services***

Women and children who are domicile of the state where rescue is carried out	HT should provide necessary services
Women and children who are domicile of the state of the Visiting Team (VT) <sup>6</sup>	VT should provide necessary services
Women and children who are domicile of a third state	HT should provide necessary services
Women and children who are from outside India	HT should provide necessary services

*Sources: Protocol on Inter State Rescue and Post Rescue Activities Relating to Persons Trafficked for Commercial Sexual Exploitation, 2017*

legal framework in framing how the victim of sexual abuse can be transferred interstate. Therefore, the Protocol has been especially made in order to address the gaps. There are four sections made in the Protocol; general principles/ guidelines, pre rescue protocol, protocol during rescue, and post rescue protocol.

The protocol concerns about women and children as it identifies the categorization of rescued persons as women and children whose domicile is in the state where rescue happened, women and children whose domicile is in the state of the Visiting Team (VT), women and children whose domicile is in a third state, and women and children who comes from out of India. It I mentioned in 3. Protocol on Activities during Rescue that a person who haven't reached the age of 18 must be identified and be sent to the Child Welfare Committee, as written under the Juvenile Justice Act that they are 'children in need of care and protection'.

### **3. Protection of Children from Sexual Offences (POCSO) Act, 2012**

POCSO Act was aimed to address the crime of child sexual abuse and exploitation effectively through legal provisions under the Ministry of Women and Child Development in 2012. It is a comprehensive legislative framework to combat CSA in India. It is in line with Article 15(3) of the Constitution of India which allows the State to create a special provisions for children. The objectives of the OPSC 2012 is to provide protection of children from the offences of sexual assault, sexual harassment, and pornography. The establishment of Special Courts for speedy trial of such offences is also become the target of the Act (NCPCR, 2017).

It specifically mention the limit age of children identification as below 18 years of age. It commits to ensure every stages of children needs including healthy social development, intellectual, emotional, and physical. The Act identifies forms of sexual abuse such assault by penetration or not with penetration, sexual harassment, and pornography. It also identifies people who undertake trafficking on children for sexual purposes are punishable to the provisions (National Commission for Protection of Child Rights, 2017) .

The Act provides punishment according to the gravity of the offence while the maximum is imprisonment for life and fine. Whoever commits penetrative sexual harassment shall be punished shall be imprisoned for seven year at minimum which may be extended for life and may also be fined. For those who commit penetrative sexual abuse shall be punished for imprisonment for ten years at minimum which may be extended for life and be fined too.

In Chapter III of the Act, using child for pornographic purposes and punishment is intended to whoever uses a child in any kinds of media such as programme, advertisement, television channels, internet or any other kind including printed form or program which is intended for personal interest or for the purpose of sexual gratification which includes; representation of the sexual of a child; usage of a child which is conducted in real or simulated sexual acts with or without penetration; and the improper representation of a child.

*Figure 7 Supportive Behaviour Towards Child Victims*



*Figure 4 Source: User Handbook on Protection on Children from Sexual Offences, 2012.*

The Act provides a recommendation about what parents can do when it comes to their child's speaking up about CSA. Parents are supposed to listen to the child when they complain about particular people on an incident that makes the child discomfort. Making interaction with people who are close to the child will also help raising the parents' concern about the issue happened to their child. Parents are also recommended to make a call to CHILDLINE at 1098 to get medical examination immediately once the incident reported. Parents can also make a report to the nearest Police Station. Parents are also demanded to be patient and be sensitive while discussing about the incident with the child.

**Figure 8 Unsupportive Behaviour Towards Child Victims**



**Figure 5 Source: User Handbook on Protection on Children from**

However, the Act also provide recommendation about what parents should not do when their child tell them about their incidents. Often, blaming the child for the abuse they experience is what the parents do. In fact, this would only leave the child not to specify more about the details of their incident and the case often would remain unreported. Therefore, the parents shouldn't blame the child. Parents should not react



extremely when the incident is reported. The child should not be sent back to the person or the place where the incident happened. Parents should not forbid the child to seek help from others. Parents are not supposed to expose their child's identity to the other people or to the media. It is also considered a mistake when parents don't provide medical care to the child or not taking action while knowing the abuse against the child is being happening.

### **C. The Preventive, Prohibitive, and Protective Coordination Establishment**

#### **1. National Coordination Group on the Rights of the Child (NCG), 2004**

The NCG was firstly established in 2004 and was reconstituted in 2005 and again in 2007. It is assigned to coordinate and to monitor the implementation of CRC and other international instruments regarding to child rights. Besides CRC including its Optional Protocols, it also focuses on other concerned Ministries, Departments, State Governments, and NGOs.

#### **2. Ujjawala Scheme, 2007**

Ujjawala Scheme is a comprehensive scheme in preventing trafficking and Rescue, Rehabilitation, Re-integration, and Repatriation of victims of trafficking and Commercial Sexual Exploitation. Through community-based initiatives, trafficking of women and children for commercial sexual exploitation is expected to be prevented by facilitating their rescue and long-term rehabilitation and their ultimate re-integration into society. It was established in 2007 under the MWCD. Repatriation for cross-border victims are also facilitated through the Scheme which provides transit camp, food, and other incidental expenses at the border check points. Rehabilitation is conducted by providing safe shelter, food, clothing, counselling, medical needs, legal aid, vocational training, and income-generation activities. Under the Scheme,

setting up of Half-way home and returning the victim into their family/ community is also arranged.

### **3. Integrated Child Protection Scheme (ICPS), 2009**

The ICPS was established in 2009 under the Ministry of Women and Child Development (MWCD). It aims to provide children in needs, and to decrease the possibilities and the vulnerabilities of children in many forms of abuse, neglect, separation of children, abandonment, and exploitation. It is an integrated scheme created and is a legal framework in the State (Childline 1098, 2006).

Some of the specific task of the ICPS are; to make the essential services as a legal institution and strengthen the structure; to increase the capability of the systems and people concerned, to provide database and knowledge about child protection services, to enhance the child protection at family and community level, to create an effective implementation of the scheme by communicating each other among the government institutions and non-government institutions, and to increase the awareness of the public about child vulnerability, rights, and protection.

Under the ICPS, there are at least three statutory support services given to children in ensuring their protection and rights. *The first* is Child Welfare Committees (CWCs) Amendment 2006. In dealing with cases for the rehabilitation, development, treatment, protection, care of children who are in need of protection and need, and to fulfilling their basic needs, it is mandatory to establish CWC in every district. An adequate infrastructure and finance shall be supported by the scheme to the State Government and UT Administration in order to be able to establish the CWCs in every district.

*The second* is Juvenile Justice Boards (JJBs) Care and Protection of Children Amendment Act, 2006. To dispose of cases for the juveniles in conflict with law, the JJBs is mandatory to be established at least one in a district. The

scheme shall also provide infrastructure and financial support to the State Government and UT Administration. *The Third* is Special Juvenile Police Units (SJPU) which was born by the provision of the Juvenile Justice Act 2000 that there should be an SJPU in every district and city. It acts to coordinate and to upgrade the interface of the police with children. The members of SJPU are all the police officers assigned as juveniles/child welfare offices in the district or city. Two social workers are mandatory to be appointed to work together with the SJPU in order to support the unit. One of the two social workers must be a woman and another will be in charge for child protection (Ministry of Woman and Child Development , 2006).

#### **D. The Preventive, Prohibitive, and Protective Resources Making through Children Budgeting**

The MWCD has been conducted child budgeting since 2003. It was the time when it becomes the community concern on budgeting on specific issues. Since then, in October 2005, the MWCD announced that it would be the concern of the MWCD in analysing in Centre and the states called regarding to the purpose. Children budgeting has also been recognized by the National Plan of Action 2005 and the Eleventh Five Year Plan documents as a further commitment in ensuring child's protection in the State.

The table below shows the share of budget allocation for children in different sectors in union budget from 2000 to 2009. There are four section are given attention to child rights including development, health, education, and protection. Within the four sectors given to children, budget for education is known the highest while the least budget is given to protection sector. Health sector comes second as the highest given attention to and development comes after health. The budgeting relatively increasing from year to year, but there are also times and sectors where the budgeting went lower.

**Figure 9 Share of Budget Allocation for Children in Different Section in the Union Budget India (in per cent)**

Year	Development	Health	Education	Protection
2000-01	0.36	0.54	1.45	0.02
2001-02	0.41	0.47	1.41	0.03
2002-03	0.45	0.51	1.45	0.04
2003-04	0.50	1.45	1.47	0.03
2004-05	0.42	0.66	1.64	0.03
2005-06	0.66	0.76	2.63	0.03
2006-07	0.83	0.84	3.52	0.04
2007-08	0.80	0.71	3.51	0.05
2008-09	0.86	0.82	2.88	0.07
Average	0.63	0.67	2.41	0.04

*Source: India Child Rights Index, 2011*