

## Commission for Protection of Child Rights

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### Description of Module

Items	Description of Module
Subject Name	Law
Paper Name	Social Transformation and Social Engineering
Module Name /Title	Commission for Protection of Child Rights
Module No.	IX

### The Commission for Protection of Child Rights

**Protection of Child Rights** : An Act to provide for the constitution of a National Commission and State Commission for Protection of Child Rights and Children's Courts for providing speedy trial of offences against children or of violation of child rights and for matters connected therewith or incidental thereto.

#### **The National Commission for Protection of Child Rights:**

- (a) **Constitution of Commission:** The Central Government is empowered to constitute a body to be known as the **National Commission for Protection of Child Rights** to exercise the powers conferred on, and to perform the functions assigned to it, under this Act. The office of Commission shall be at Delhi. The Commission shall consists of the following members-
- (i) A Chairperson who is a person of eminence and has done outstanding work for promoting the **welfare of children**: and
- (ii) Six Members, out of which at least **two shall be women**, from the following fields, to be appointed by the Central Government from amongst persons of eminence, ability, standing and experience in (a) education (b) child health, care, welfare or children development (c) Juvenile justice or care of neglected or marginalized children or children with disabilities (d) elimination of child labour or children in distress (e) child psychology or sociology and (f) laws relating to children.
- (b) **Appointment and term of Office:** The Central Government shall appoint the chairperson and other members of the Commission. Chairperson shall be appointed on

the **recommendation of the three member** Selection Commission constituted by the Central Government under the chairmanship of the “Minister in-charge of the Ministry or the Department of Women and Child Development”<sup>2</sup>. Term of the Commission is **three years** and chairperson or members may be re-elected for second term, but not for more than **two terms**. No chairperson shall hold the office after attaining **the age of 65** years and member after attaining the age of 60 years. Any of them may resign from his office at any time in writing to Central Government.

(c) **Removal from Office:** The chairman may be removed from his office by an order of the Central Government on the **ground of misbehavior or incapacity**. No person shall be removed until that person has been given an **opportunity of being heard** in the matter. The Central Government may by order remove from office the Chairperson or any other member, if the Chairperson or, as the case may be, such other member-

- (i) Is adjudged an insolvent, or
- (ii) Engage during his term of office in any paid employment outside the duties of his office, or
- (iii) Refuses to act or becomes incapable of acting, or
- (iv) Is of unsound mind and stands so declared by a competent court, or
- (v) Has so abused his office as to render his continuance in office detrimental to the public interest, or
- (vi) Is convicted and sentenced to imprisonment for an offence, which in the opinion of the Central Government involves moral turpitude, or
- (vii) Is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of Commission.

(d) **Procedure for transaction of Business:** The Commission shall meet regularly at its office at such time as the Chairperson thinks fit, but **three months** shall not intervene between its last and the next meeting. All decisions at a meeting shall be taken by majority. In the case of equality of votes, the chairperson or presiding officer have the right to cast second vote. The Commission shall observe such rules of procedure in the transaction of the business at a meeting, including the quorum at such meeting, as may be prescribed by the Central Government. All orders and decisions of the Commission shall be authenticated by the Members-Secretary or any other officer of the Commission duly authorised by Member-Secretary in this behalf.

#### **Functions of the Commission:**

- (a) **Examine and review the safeguards:** Prime function of the Commission is to examine and review the safeguards provided by **or under any law for** the time being in force, for the protection of the child rights and recommend measures for their effective implementation.
- (b) **Present reports on Working of safeguards:** The Commission shall present reports to the Central Government, upon the working of those safeguards, **annually** and at such other time, as the Commission deems fit.

- (c) **Inquire into violation of child rights:** The Commission shall inquire into violation of child rights and recommend initiation of proceedings in such cases.
- (d) **Examine all factors :** The Commission shall examine all factors that inhibit the enjoyment of rights of children affected by the terrorism, communal violence, riots, natural disaster, domestic violence, HIV / AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures.
- (e) **Look into the matter needing special care and protection:** The Commission should look into the matters relating to children in need of special care and protection including children in distress, marginalized and disadvantaged children, children in conflict with law, juvenile, children without family and children of prisoners and recommend appropriate remedial measures.
- (f) **Undertake and promote research:** The Commission shall undertake and promote research in the field of child rights.
- (g) **Spread child rights literacy among various sections:** The Commission shall spread child rights literacy among various sections of the society and promote awareness of the safeguards available for protection of these rights through publications, the media, seminars and other available means.
- (h) **Inspect juvenile custodian home, etc.:** The Commission shall inspect or cause to be inspected any juvenile custodial home, or any other place of residence or institution meant for children, under the control of the Central Government or State Government or any other authority, including any institution run by a social organisation, where children are inmates or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary.
- (i) **Inquire into complaint or take suo motu notice:** The Commission shall inquire into complaints and take suo motu notice of the matters relating to (i) deprivation and violation of child rights; (ii) non-implementation of laws providing for protection and development of children (iii) non-compliance of public policy decisions, guidelines for instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children. The Commission may take up the issue out of such matters, with appropriate authorities.

**Restriction on inquiry:** The Commission shall not inquire into any matter which is pending before the State Commission or any other Commission duly constituted under any law for the time being in force.

- (j) **Monitoring of Child's right to education:** According to section 31 of the Right of Children to Free and Compulsory Education Act, 2009, the National Commission for Protection of Child Rights constituted under section 3 or, as the case may be, the State Commission for Protection of Child Rights constituted under section under section 17, of the Commissions for

Protection of Child Rights Act, 2005 (4 of 2006), shall, in addition to the functions assigned to them under that Act, also perform the following, namely:

- (a) Examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation.
- (b) Inquire into complaints relating to child's right to free and compulsory education.

**Powers of the Commission:**

- (i) **Issuing of Summons:** Summoning and enforcing the attendance of any person and examining him on oath.
- (ii) **Requiring the discovery of documents:** Requiring the discovery and **production of any document.**
- (iii) **Receiving evidence:** Receiving evidence on affidavits.
- (iv) **Requisitioning any public record:** Requisitioning any public record or copy thereof from any court or office.
- (v) **Appointing of Commissions:** Appointing of commissions for the examination of witnesses and documents.

**Steps after inquiry:**

- (i) Where the inquiry discloses, the commission of violation of child rights of a serious nature or contravention of provisions of any law for the time being in force, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other actions as the Commission may deem fit against the concerned persons or persons.
- (ii) **Approach the Supreme Court or the High Court** concerned for such directions, orders or writs as that court may deem necessary.
- (iii) **Recommend to the concerned Government** or authority for the grant of such interim relief to the members of victims family as the Commission may consider necessary.

**Annual and special reports of Commission:** The Commission shall submit an annual report to the Central Government and to the State Government concerned and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

**(a) Constitution of State Commission for Protection of Child Rights:**

- (i) A Chairperson, who is a person of eminence and has done outstanding work for promoting the welfare of children, and
- (ii) **Six Members**, out of which **at least two shall be women**, from the following fields, to be appointed by the Central Government from amongst persons of eminence, ability, standing and experience in
  - (a) education
  - (b) child health, care, welfare or children development
  - (c) juvenile justice or care of neglected or marginalized children or children with disabilities
  - (d) elimination of child labour or children in distress
  - (e) child psychology or sociology and
  - (f) laws relating to children.

(b) **Appointment and term of Office:** The State Government shall appoint the chairperson and other members of the Commission Chairperson shall be appointed on the recommendation of the three member Selection Committee constituted by the Central Government under the Chairmanship of the minister-in-charge of the Department dealing with the children. Term of the Commission is three years and chairperson or members may be re-elected for second term, but not for more than two terms. No chairperson shall hold the office after attaining the age of 65 years and member after attaining the age of 60 years. Any of them may resign from his office at any time in writing to Central Government.

(c) **Annual and Special reports of State Commission:** The State Commission shall submit an annual report to the State Government and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

#### **Children's Court :**

(a) **Children's Court :** According to Section 25 of the Act, for the purpose of providing speedy trial of offences against children or of violation of child rights, the State Government may with the concurrence of the Chief Justice of the High Court, by notifications specify at least a court in the **State or specify, for each district**, a Court of Session to be children's court to try the said offence. It shall not apply if, a Court of Session is already specified as a special court or a special court is already constituted for such offences under any law for the time being in force.

(b) **Special Public Prosecutor:** The State Government shall specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for at least 7 years, as a Special Public Prosecutor for the purpose of conducting the cases in every Children's Court.

#### **Provisions relating to finance, account and adult:**

(a) **Grants by the Central Government:** According to Section 27 of the Act, the Central Government shall, after due appropriation made by Parliament by law in this behalf, **pay to the Commission by way of grants** such sums of money as the Central Government may think fit for being utilized for the purpose of this Act. The Commission may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants.

(b) **Grants by State Governments:** According to Section 28 of the Act, the State Government shall, after due appropriation made by Legislature by law in this behalf, pay to the State Commission by way of grants such sums of money as the State Government may think for being utilized for the purpose of this Act. The State Commission may spend such sums as it thinks fit for performing the functions under this Act, and such shall be treated as expenditure payable out of the grants.

(c) **Accounts and audit of Commission:** According to Section 29 of the Act, the Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor General of India.