



PARLIAMENT OF INDIA RAJYA SABHA

240

**DEPARTMENT-RELATED PARLIAMENTARY STANDING
COMMITTEE ON HUMAN RESOURCE DEVELOPMENT**

TWO HUNDRED FORTIETH REPORT

ON

**THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES
BILL, 2011**

**(PRESENTED TO THE RAJYA SABHA ON 21ST DECEMBER, 2011)
(LAID ON THE TABLE OF LOK SABHA ON 21ST DECEMBER, 2011)**

**RAJYA SABHA SECRETARIAT
NEW DELHI
DECEMBER, 2011/ AGRAHAYAN, 1933 (SAKA)**

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COMPOSITION OF THE COMMITTEE ON HRD

(2010-11)

Shri Oscar Fernandes — *Chairman*

RAJYA SABHA

2. Shrimati Mohsina Kidwai
3. Dr. K. Keshava Rao
4. Shri Prakash Javadekar
5. Shri M. Rama Jois
6. Shri Pramod Kureel
7. Shri N.K. Singh
8. Shrimati Kanimozhi
9. Dr. Janardhan Waghmare
10. Shri N. Balaganga

LOK SABHA

11. Shri Kirti Azad
- Shri P.K. Biju
- Shri Jeetendra Singh Bundela
- Shri Suresh Chanabasappa Angadi
- Shrimati J. Helen Davidson
- Shri P.C. Gaddigoudar
- Shri Rahul Gandhi
- Shri Deepender Singh Hooda
- Shri Prataprao Ganpatrao Jadhav
- Shri Suresh Kalmadi
- Shri P. Kumar
- Shri Prasanta Kumar Majumdar
- Capt. Jai Narain Prasad Nishad
- Shri Sheesh Ram Ola
- 25 Shri Tapas Paul
- 26 Shri Brijbhushan Sharan Singh
- 27 Shri Ashok Tanwar
- 28 Shri Joseph Toppo
- 29 Dr. Vinay Kumar Pandey 'Vinnu'
- 30 Shri P. Viswanathan
- 31 Shri Madhu Goud Yaskhi

Constituted w.e.f 31st August, 2010

COMPOSITION OF THE COMMITTEE ON HRD

(2011-12)

Shri Oscar Fernandes

— *Chairman*

RAJYA SABHA

2. Shrimati Mohsina Kidwai
3. Dr. K. Keshava Rao
4. Shri Prakash Javadekar
5. Shri M. Rama Jois
6. Shri Pramod Kureel
7. Shri N.K. Singh
8. Shrimati Kanimozhi
9. Dr. Janardhan Waghmare
10. Shri N. Balaganga

LOK SABHA

11. Shri E.T. Mohammed Basheer
12. Shri Kuvarjibhai Mohanbhai Bavalia
13. Shri Mirza Mehboob Beg
14. Shri Sameer Bhujbal
15. Shri P.K. Biju
16. Shri Jeetendra Singh Bundela
17. Shri Suresh Channabasappa Angadi
18. Shri P.C. Gaddigoudar
19. Shri Rahul Gandhi
20. Shri Kapil Muni Karwariya
21. Capt. Jai Narayan Prasad Nishad
22. Shri Sheesh Ram Ola
23. Km. Saroj Pandey
24. Shri Prasanna Kumar Patasani
25. Shri Balakrishna Khanderao Shukla
26. Shri Ashok Tanwar
27. Shri Joseph Toppo
28. Dr. Vinay Kumar Pandey 'Vinnu'
29. Shri P. Viswanathan
30. Shri Madhu Goud Yaskhi
31. *Shri Rathod Ramesh

Constituted w.e.f. 31st August, 2011

**Nominated w.e.f. 25.11.2011*

SECRETARIAT

Smt. Vandana Garg, Additional Secretary

Shri N.S. Walia, Director

Shri Arun Sharma, Joint Director

Shri Sanjay Singh, Assistant Director

Smt. Himanshi Arya, Assistant Director

Smt. Harshita Shankar, Committee Officer

PREFACE

I, the Chairman of the Department-related Parliamentary Standing Committee on Human Resource Development, having been authorized by the Committee, present this Two Hundred and Fortieth Report of the Committee on the Protection of Children from Sexual Offences Bill, 2011*.

2. The Protection of Children from Sexual Offences Bill, 2011 was introduced in the Rajya Sabha on 23 March, 2011. In pursuance of Rule 270 relating to Department-related Parliamentary Standing Committees, the Chairman, Rajya Sabha referred** the Bill to the Committee on 28 March, 2011 for examination and report.

3. The Committee started its deliberations by issuing a Press Release on 8 June, 2011 for inviting views and suggestions of the general public as well as the stakeholders on the Bill. The Committee received 15 memoranda in response to the Press Release. The memoranda were forwarded to the Ministry of Women and Child Development for comments. Views of the stakeholders and the comments of the Ministry were taken note of while formulating the observations and recommendations of the Committee. The Committee heard the views of the Secretary, Ministry of Women and Child Development in its meeting held on 18 August, 2011. Besides the Ministry, the Committee also held deliberations with a number of stakeholders which included the National Commission for Protection of Child Rights, Civil Society Organizations and Child Right Agencies, i.e. HAQ Centre for Child Rights, India Alliance for Child Rights, Tulir Centre for Prevention & Healing of Child Sexual Abuse, Indian Council for Child Welfare, PRAYAS, MARG, Don Bosco-National Forum for the Young at Risk, SOS Children's Village and Save the Children-a Pro Child Protection Coalition

4. The Committee considered the Bill in five sittings held on 8 August, 30 September, 13 October, 8 and 19 December, 2011.

5. The Committee, while drafting the Report, relied on the following:-

(i) Background Note on the Bill and Note on the clauses of the Bill received from the Ministry of Women and Child Development

(ii) Presentation made and clarifications given by the Secretary, Ministry of Women and Child Development

Feedback received from the Ministry on the questionnaires and the memoranda of the stakeholders along with the issues raised by the Members during the course of the oral evidence; and

Replies to the questionnaire and feedback received from the stakeholders heard by the Committee.

6. The Committee considered the Draft Report on the Bill and adopted the same in its meeting held on 19 December, 2011.

7. For facility of reference, observations and recommendations of the Committee have been printed in bold letters at the end of the Report.

NEW DELHI; OSCAR FERNANDES

December 19, 2011 Chairman,

Agrahayana 28, 1933 (Saka) Department-related Parliamentary
Standing Committee on Human Resource Development

(iii)

* Published in Gazette of India Extraordinary Part II Section 2 dated the 23rd March, 2011

** Rajya Sabha Parliamentary Bulletin Part II No.48393 dated the 29th March, 2011

REPORT

I INTRODUCTION

1.1 The Protection of Children from Sexual Offences Bill, 2011 was referred to the Department-related Parliamentary Standing Committee on Human Resource Development by the Chairman, Rajya Sabha on 28 March, 2011 for examination and report.

1.2 The proposed Bill seeks to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.

1.3 The Statement of Objects and Reasons to the Bill reads as follows:-

“Article 15 of the Constitution, inter alia, confers upon the State powers to make special provision for children. Further, Article 39, inter alia, provides that the State shall in particular direct its policy towards securing that the tender age of children are not abused and their childhood and youth are protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity.

The United Nations Convention on the Rights of Children, ratified by India on 11th December, 1992, requires the State Parties to undertake all appropriate national, bilateral and multilateral measures to prevent (a) the inducement or coercion of child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; and (c) the exploitative use of children in pornographic performances and materials.

The data collected by the National Crime Records Bureau shows that there has been increase in cases of sexual offences against children. This is corroborated by the ‘Study on Child Abuse: India 2007’ conducted by the Ministry of Women and Child Development. Moreover, sexual offences against children are not adequately addressed by the extant laws. A large number of such offences are neither specifically provided for nor are they adequately penalized. The interests of the child, both as a victim as well as witness, need to be protected. It is felt that offences against children need to be defined explicitly and countered through commensurate penalties as an effective deterrence.

It is therefore, proposed to enact a self contained comprehensive legislation inter alia to provide for protection of children from the offences of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well being of the child at every stage of the judicial process, incorporating child-friendly procedures for reporting, recording of

evidence, investigation and trial of offences and provision for establishment of Special Courts for speedy trial of such offences.

The Bill would contribute to enforcement of the right of all children to safety, security and protection from sexual abuse and exploitation.”

1.4 The Secretary, Ministry of Women and Child Development in his deposition before the Committee on 18 August, 2011 gave an overview of the background necessitating a special legislation for the protection of children from sexual offences. Committee's attention was drawn to the fact that the Constitution of India permitted positive discrimination in favour of children and provided that the State shall direct its policy to ensure its policy to ensure that children are not abused. Article 39 of the Constitution provided that the State shall direct its policy to secure that the tender age of the child was not abused and that the State would ensure that the children were given opportunities to develop in conditions of freedom and dignity. He also made a mention of India being a signatory to the UN Convention on the Rights of Child which placed an obligation on the country to give primary consideration to the best interest of the child in all actions undertaken by it including the actions undertaken by the Courts of Law, Administrative Authorities or the Legislative Bodies. Elaborating further, the Secretary pointed out that Articles 3(2) and 34 of the Convention placed a specific duty on the State to protect the child from all forms of sexual exploitation and sexual abuse.

1.5 Committee's attention was drawn to the National Crime Records Bureau (NCRB) data which indicated that there had been a significant increase in sexual offences against children which included rape, procurement of minor girls, buying and selling of girls for prostitution up from 2,265 in 2004 to 5694 in 2009. Further, out of total 20,890 reported cases of rape in 2009, nearly 24 per cent i.e. 5368 rape cases were against children. What was more worrisome was that 11 per cent of such cases were against children below the age of 14 years and 3 per cent against children below the age of 10 years.

1.6 Co-relating the number of cases with the conviction rate of offences of rape against children, the Secretary drew the attention of the Committee to the disturbingly revealing figures. It was informed that the conviction rate of rape cases had come down to 30.7 per cent in 2009 from 38.7 per cent in 2001. In the case of procuring of minor

girls, the conviction rate had fallen even further from 39.1 per cent to 18.9 per cent during the same period. It was submitted that lower conviction rate was one of the reasons for increasing tendency to commit offences against children. On a specific query about the specific factors behind such trend, Committee's attention was drawn to the following:

- *lack of adequate evidence particularly in rape case;*
- *prolonged investigation process by police;*
- *lack of effective victim protection programmes combined with protracted judicial proceedings and stigma faced by victims; and*
- *poor knowledge about the existing legal provisions for women amongst the police.*

1.7 Committee was also apprised about a study on child abuse conducted by the Ministry in 2007 covering 13 States. Out of 12, 447 children interviewed for the study, more than 53 per cent reported having faced one or more forms of sexual abuse. More importantly, 50 per cent abusers were reported to be known to the child or were people who were in a position of trust or responsibility with respect to the child. The Committee observes that 13 States covered under the study are Mizoram, Assam, Goa, Delhi, Rajasthan, Uttar Pradesh, Bihar, West Bengal, Madhya Pradesh, Maharashtra, Andhra Pradesh, Gujarat and Kerala. The Committee has been given to understand that the selection of States was done zone-wise, ensuring that sampling States represented all qualities of offences/crimes against children. Given the representative nature of the sample and criteria adopted for the selection of 13 States for the study, the findings of the study can be considered reflective of child abuse in the remaining States also.

1.8 The Committee takes note of the major existing laws that address sexual offences against children which include the Indian Penal Code, the Immoral (Traffic) Prevention Act, 1956, the Cable Television Network (Regulation) Act, 1995 and the Information and Technology (Amendment) Act, 2008. However, these laws do not recognize many offences against children as offences such as sexual assault, sexual harassment, sexual violence against children etc. Further, there are no effective laws dealing with sexual abuse of male children. In such a scenario, with increasing incidents of sexual offences

against children and low conviction rate, one can only conclude that the existing laws are not adequate enough.

1.9 Advocating the need for a special legislation for the protection of children, the Secretary submitted that since children were more vulnerable and scope for their exploitation and abuse being far more, given their tender age and innocence, a separate legislation was required to protect the children from all possible kinds of situation in which they could be used, abused or misused. It was emphasized that such a law, in addition to providing protection to children would also help in the development of child jurisprudence in this country. Currently, children's trials were getting mixed with adults not only because the Criminal Justice Administration System was more geared to dealing with the crimes against adults but investigations undertaken by the police were also geared to handling crimes against adults. The Ministry strongly believed that in such a situation, it was very difficult to safeguard the interests of the child both as a victim and as a witness. As 20 per cent of the world's children were living in India, it was one of the compelling reasons for the Ministry to bring forth a jurisprudence which was child sensitive and provided for a child-friendly environment in dealing with crimes against children.

1.10 On a specific query about laws addressing sexual offences against children in other countries, the Committee was informed that a review of legislations of several countries, with focus on providing clear definition of an offence, grading of the penalty as per the severity of the offence, provisions for aggravated situations, commission of offence by persons in position of trust or responsibility and securing the best interest of the child at every stage of the judicial process was conducted by the Ministry. A mention of the special law in UK for sexual offences against children, a separate chapter in the Penal Code of USA for sexual offences against children and special laws addressing different kinds of offences against children in Ireland and South Africa was made in this context. The Committee was given to understand that the review had proved useful in the formulation of the proposed legislation.

1.11 Against this backdrop, it was internally debated in the Ministry whether to amend the IPC and add a chapter on child sexual offences or to have a special law looking at the international experience. Amendments to IPC was a long drawn process as it required consultation with the Law Commission, the State Governments and a lot of stakeholders. Attention was drawn to the proposal for amendment to section 376 of IPC which had continued to be under consideration for the last ten years. Accordingly, a consensus was evolved to bring a special law to deal with sexual offences against children which not only provided protection to children but also served as an effective deterrence to the commission of these offences.

1.12 Touching upon the significant features of the Bill, the Secretary informed the Committee that it was for the first time in the history of criminal law, that the term 'sexual harassment' had been defined very comprehensively which included stripping, blackmailing or stalking of a child with sexual intent. So far, all such situations were addressed collectively under one provision of IPC, i.e. section 509 for outraging the modesty of a woman. Secondly, keeping in view the low conviction rate of sexual offences against children, a presumption has been provided in the Bill that the accused in case of sexual assault has committed the offence unless proved contrary. It was mentioned that such a provision already existed in our law. Sections 113A and 114A of the Indian Evidence Act already create presumptions in two situations, cruelty for dowry and for rape. Vulnerability of the victims and the difficulty in collecting the evidence were the two factors leading to such a provision being incorporated in the Bill. Misuse of such a provision had also been taken care of by including a safeguard therein.

1.13 The Committee observes that the Ministry's National Study on Child Abuse in 2007 covering 13 States and the NCRB data of Sexual Offences against children in 2009 reveal some shocking figures on child abuse in the country. According to the Ministry's study of 2007, different forms of child abuse were prevalent in the States covering physical abuse, sexual abuse including sexual assault, emotional abuse and girl child neglect. Further, as per the data of NCRB for the year 2009, incidents of rape were the most common form of sexual abuse against children followed by procurement of minor girls, selling and buying of girls for prostitution with some of the States showing

alarming figures. The data also showed that among the States, Andhra Pradesh, Chhattisgarh, Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal reported higher number of rape cases of children. Among the Union Territories, Delhi reported the highest number of rape incidents of children. The Committee also takes note of the findings of the study conducted by the Ministry in 2007 which are quite alarming. Out of the 12,447 children of 13 States covered, Andhra Pradesh (72.89 %), Assam (86.26%) Bihar (67.64%) and Delhi (72.26%) reported the highest percentage of sexual abuse among both boys and girls. The Committee observes that both NCRB data (2009) and Study conducted by the Ministry (2007) do not reflect the latest position. The Committee apprehends that the position at the ground level would have worsened. Candid admission of the Ministry about the ineffectiveness of the existing laws compounded by the prolonged process of incorporating the required provisions therein makes it amply clear that the proposed legislation is the need of the hour.

1.14 The Committee, while taking note of the fact that there is no law to deal comprehensively sexual offences against children and in a way of discharging an obligation to the United Nations Convention on the Rights of Children which India has ratified, welcomes the initiative of the Ministry in drafting a special law to deal with such offences against children proposing to evolve child-friendly procedures for investigation and handling of child-abuse cases. The Committee understands that sexual offence of any kind not only harms the child physically but also causes long term damage to the mental state of the child. Therefore, in addition to providing for effective mechanism for handling child-related sexual offences through the proposed legislation, there is an urgent need for initiating some preventive measures so as to ensure that chances of sexual exploitation of children remain minimum. Along with preventive and protective safeguards, aspect of relief and rehabilitation of these most vulnerable victims will also have to be looked into. There are certain other very pertinent issues also which require thoughtful consideration before the Bill is translated into an Act. The Committee is of the firm view that objective of the proposed legislation will remain unfulfilled if both the

preventive and rehabilitative aspects remain sidelined. These issues need to be addressed within the Bill to the extent possible and through other mechanisms. All these issues have been dealt with in detail at appropriate places in the Report.

II CONSULTATION PROCESS

2.1 The Committee was informed that this Bill was an outcome of extensive consultations and discussions with Ministries, State Governments, civil society, and experts. The need to address offences against children came to the forefront during discussions relating to the commissioning of the Study on Child Abuse: India 2007, which identified widespread abuse of children in the country. The consultations, which were initiated in 2005, led to the conclusion that there was a need for legislation on child abuse. The then Department of Women and Child Development prepared a Draft Offences against Children Bill, 2005 in consultation with civil society participants and experts which covered various offences against children, including, *inter alia*, sexual offences. The Draft Offences against Children Bill, 2005 was sent to MHA for review by the Department in November, 2005. The MHA was also requested to consider amendment to the IPC by incorporating the provisions of the Draft Offences against Children Bill, 2005. However, MHA opined that as amendment to IPC was a long-drawn process, a comprehensive legislation on child abuse may be considered by the Department. The Bill of 2005 which was thereafter shared with the State Governments for their views and inputs received support from them. Subsequently, the Bill was discussed through inter-ministerial consultations in 2006-07.

2.2 The Committee was further informed that the Department of Legal Affairs returned the Bill with the observation that most of the offences in the Bill were already covered under the existing laws, and the purpose of bringing a new law was not clear. Some other major suggestions were also received from the Ministries of Home Affairs and Labour and Employment. The Bill was, accordingly, revised and sent to the Department of Legal Affairs, with the clarification that the purpose of bringing the proposed legislation was to provide stringent punishment for various offences which were already punishable under the existing Acts such as the IPC, Immoral Traffic Prevention Act, 1956, Information & Technology Act, 2000, Child Labour (Prohibition

and Regulation) Act, etc. During mid 2007, consultations held by the National Commission for Protection of Child Rights (NCPCR) with India Alliance for Child Rights, HAQ Centre for Child Rights, UNICEF and TULIR emphasized that instead of having a separate Bill, appropriate changes could be made in CrPC, Evidence Act and additional chapter/provision could be added in the IPC to address the requirements adequately. However, in view of the findings of the Study on Child Abuse and the specific advice given by MHA on the need for a separate law, the draft Bill was further discussed and revised by NCPCR between January-September 2009.

2.3 In January 2010, NCPCR again held consultations with NGOs, legal experts, child right activists and concerned government officers. A major change of opinion that emerged from these consultations was that instead of a general legislation covering all offences against children, focus should be on a Bill for Sexual Offences against children. It was felt that the relevant sections of IPC, CrPC, Evidence Act and other laws could be amended concurrently to ensure that children were not victimized further and justice was rendered in a time bound manner.

2.4 Meanwhile, the Ministry of Law and Justice in consultation with NGOs prepared a draft Bill on Sexual Offences against Children and sent it to MWCD for further action. Discussions between MWCD, Ministry of Law and Justice and NCPCR led to the conclusion that the Draft Bill on Sexual Offences against Children be expanded to cover pornography and provide for more child friendly procedures. Later in the second stage, the Juvenile Justice Act, 2000 would be expanded to include other offences against children which were not addressed in any other law. Then, in September, 2010, MWCD along with concerned Ministries and NCPCR prepared a draft Protection of Children from Sexual Offences Bill, 2010 and circulated it to the concerned Ministries for comments. In November 2010, another draft Bill was prepared by NCPCR and shared with MWCD. Since then, MWCD has revised the proposed Bill based on suggestions given by Ministries, State Governments/UTs and NCPCR.

2.5 **The Committee observes that the Ministry has held an extensive consultation exercise since 2005 with a large number of stakeholders, concerned Ministries, the**

National Commission for Protection of Child Rights, a statutory body having the mandate of protection of child rights and organizations actively working for the cause of children. The Committee, however, observes that there were a number of issues raised by many stakeholders before the Ministry which required its consideration. During its deliberations, these suggestions/apprehensions were again emphasized with conviction and collaborated by facts. The Committee has analyzed such suggestions at the relevant places in the Report. The proposed legislation which is the final outcome of such a prolonged exercise undertaken with involvement of all concerned is indeed a welcome step.

2.6 The Committee also made an attempt to hear a number of stakeholders on this very important piece of legislation. The Committee issued a Press Release on 8 June, 2011 for inviting views and suggestions from the general public as well as the stakeholders on the proposed legislation. 15 memoranda raising pertinent issues received from the stakeholders were forwarded to the Ministry for its comments. Besides hearing the Secretary, Ministry of Women and Child Development on 18 August, 2011, the Committee also heard the views of the National Commission for Protection of Child Rights in its meeting held on 30 September, 2011. The Committee also had the opportunity to interact with other stakeholders from Civil Society Organizations and Child Right Agencies such as the HAQ Centre for Child Rights, Tulir-Centre for Prevention and Healing of Child Sexual abuse, Indian Council for Child Welfare, India Alliance for Child Rights, PRAYAS, MARG, Don Bosco National Forum for the Young at Risk, SOS Children's village and Save the Children – a Pro-Child Protection Coalition.

2.7 The Committee had a detailed interaction with the Chairperson and other representatives of the National Commission for Protection of Child Rights on the proposed legislation in its meeting held on 30 September, 2011. The Chairperson of the Commission informed the Committee that NCPCR had been receiving several complaints of sexual abuse of children since the last four years which sometimes were of children as young as two years old. More compounding was the fact that most of the cases were left unreported and were not even criminalized due to the intimidating process of adjudication. The present judicial system was adult-centric and meant to adjudicate the

cases of adults. It was silent on the issue of children when they came in contact with the law. The Commission strongly emphasized on the need to have a child-friendly judicial process especially for the children who had been subjected to sexual offences or child labour. It was pointed out that the judicial process of adjudication in the case of child victim should be the process of healing and not that of re-victimization. The Commission held six consultations with judges, retired judges, lawyers, police officers, social activists, academics, researchers etc in different parts of the country using the infrastructure of National Law Universities. Practising criminal lawyers having the experience and expertise of dealing with similar offences were also part of this exercise, Besides that, the Commission also made an effort to have a comparative analysis of jurisprudence in this regard in twelve countries.

2.8 The NCPCR had also drafted a Bill on the advice of the Ministry of Women and Child Development and NAC which it shared with the Committee. The Committee was informed that there were great similarities between the two drafts, like special courts, stand alone legislation and also quite a large area of overlap and commonality. Broadly speaking, there were six areas where the Commission and the Ministry had a different approach reflected in their respective drafts. Firstly, while in the Ministry's draft, offences were clubbed together, there was 'fair labeling' of offences in the Commission's draft. It was pointed out that precise definition of each offence would prove to be advantageous as it would help the State to prosecute an offender for the particular offence committed and enhance successful prosecution accordingly. The second major difference was non-criminalization of certain sexual acts between children of tender age and simplifying the complexity of dealing with consent by relying on a set of circumstances which make certain sexual acts unlawful in the NCPCR draft which were not there in the Ministry draft. These circumstances were Force, Coercion, Threat, Impersonation, Mistake, Intoxication, Undue advantage, when child is asleep/unconscious or against the will/consent of the child. Thirdly, there was almost nothing in the Ministry draft corresponding to services of case worker, child support services and Guardian *ad litem* provided for in the NCPCR draft. It was pointed out that statutorily empowered adult supporters were must for the child through investigation, trial and restitution, particularly

under a system of criminal Justice Administration meant for adults. Fourthly, as compared to the Ministry draft, NCPCR draft clearly delineated investigation and provided commonly required types of protection to the child victim elaborately. Fifthly, NCPCR draft conceptualized a comprehensive package of child friendly special measures and balanced the requirement of fair trial for the accused also in careful detail. Lastly, NCPCR draft contemplated a compensation fund to be accessed by the child as restitution for physical and mental injuries caused and completely delinked it from conviction of the accused. Summing up her presentation, the Chairperson drew the attention of the Committee to a very crucial aspect of having a Fund for providing some relief to child victims. Keeping in view the financial constraints of State Governments, such a Fund needed to be set up by the Central Government. It was suggested that a mechanism could be evolved whereby money could be deposited in the court and the Guardian *ad litem* would be available in help the child victim access compensation. Committee's attention was also drawn to the schemes like Integrated Child Protection Scheme whereunder case workers, counsellors, social workers, probation officers and other facilities were already provided. Apprehensions about extra investments should, therefore, not be raised.

2.9 The Committee is happy to note that the Ministry has undertaken wide ranging consultation with NCPCR and various other stakeholders which drafting this legislation. It was a good initiative to have a separate law to deal with sexual offences against children than making amendments in the IPC. The Committee appreciates the efforts of the National Commission for Protection of Child Rights in providing the alternative draft. The Committee observes that although the Ministry has kept the draft Bill of NCPCR as the basis of this legislation, many of the recommendations have not been incorporated in it. The Committee has made an attempt to identify such recommendations and has incorporated some of them at appropriate places in the proposed Bill.

2.10 The Committee has also taken note of the views/suggestions of the stakeholders on various provisions of the Bill. Besides that, detailed questionnaire on the Bill was forwarded to the Ministry and also to the stakeholders heard by the Committee for their comments. Memoranda received in response to the Press

Release were also sent to the Ministry for its response. All this feedback has proved to be of immense help to the Committee in formulating its views on the various provisions of the Bill. Committee's deliberations with some organizations actively engaged in the child welfare activities at the ground level for considerable period of time proved very fruitful. Their experience and expertise of jurisprudence from the perspective of child victims vis-à-vis adult victims gave a valuable insight to the Committee to understand the genesis of the proposed legislation, implications of its various provisions, problem-areas in its implementation and the aspects remaining uncovered.

III. IMPORTANT ISSUES/CONCERNS RAISED

3.1 The Committee during its interactions with stakeholders came across many issues/concerns that required consideration. The Committee is of the view that these issues are very pertinent and have adequate relevance so far as efficacy of the proposed legislation is concerned and, accordingly, need to be reflected either in the proposed legislation itself or in the rules/guidelines to be framed thereunder. These issues/concerns are as under:-

Rehabilitation, Compensation, Counseling and Support Services for the Victims

3.2 During its deliberations with various stakeholders and also through the memoranda received on the Bill, one issue which kept on emerging time and again was that in addition to protection of child victims, aspects like their rehabilitation, compensation, counseling and support services also needed to be made part of the Bill. It was pointed out that focus was mainly on reporting, investigation and prosecution, leaving out the rehabilitation, treatment, care, and counseling aspects altogether. It was felt that these measures could help in minimizing the consequences of abuse and violence. Following are the specific components which were suggested for incorporation in the proposed legislation:

- free and confidential counseling and support services for victims/survivors by professionally trained counselors should be provided.
- a multi-disciplinary approach for the care, treatment and rehabilitation of child victims was required.

- involvement of various professionals including doctors, counselors, social workers/NGOs to ensure that the complex needs of the victim as well as her/his family is taken care of
- rehabilitation services should include-health interventions like medical care, trauma therapy and individual, group or family counseling, social interventions like placement of the child victim in foster care, supervision of families/foster families by child protection functionaries, financial assistance-compensation to help the victim and family for treatment, support, care and rehabilitation.
- creation of a fund towards survivor support and rehabilitation. The fine collected as punishments can be transferred to this fund.
- clear guidelines on providing of compensation/rehabilitation by the State in addition to the court orders.
- comprehensive victim support services to be integrated into ICPS at State and district levels.

3.3 On this issue being taken up with the Ministry, it was clarified that the present Bill had been introduced to deal with sexual offences against children effectively, besides moving towards establishing child jurisprudence in the country. The larger issue of protection of victims and witnesses was a time-consuming process and was beyond the scope of the present Bill. However, the Bill already includes several child friendly provisions which had been framed keeping in view the best interest of the child at all stages of the legal process. The Committee was also given to understand that a considered decision had been taken to expand the scope of the Juvenile Justice Act to cover all other offences against children, which were currently not addressed by any other law and to provide mechanisms for care and support of children in need including child victims and witnesses of sexual offences.

3.4 The Committee is not convinced by the clarification given by the Ministry. The present legislation addresses specific offences against children and has been brought forth from the perspective of a child who is a victim of sexual abuse. The Committee strongly feels that protection of children from sexual offences has to be seen in a wider perspective. Confining it to confirmation of a sexual offence against a child followed by levying of punishment through special courts is simply ignoring the real welfare of a child victim who may be in deep trauma with no family support and thus fully exposed to further abuse. Every attempt both at individual level and society level has to be made for enabling a child victim to become again a happy normal child. To achieve this objective, a fully functional and effective institutional

mechanism has to be put in place and that can only be done through making statutory provisions, formulating rules and guidelines. The Committee observes that the Juvenile Justice (Care and Protection of Children) Act, 2000 is meant for all the children who require care and protection due to their placement in certain situations as specified in the said Act. The JJ Act has detailed provisions for relief and rehabilitation of such children. Under the Act state governments are required to set up Child Welfare Committees, which are empowered to dispose of cases for care, protection, treatment, development and rehabilitation of children and provide for their basic needs and protection of human rights. There is also provision for children's homes, shelter homes and also a provision for rehabilitation and social reintegration.

3.5 The Committee was given to understand that the Juvenile Justice Law needs to be strengthened or otherwise adequate provisions may be built into the proposed law referring to the Juvenile Justice Law. The role of the District Child Protection Societies, Special Juvenile Police Units, Child Welfare Committees, Welfare Officers and Probation Officers provided for in the Juvenile Justice Law is critical in ensuring speedy recovery, social reintegration and rehabilitation of child victims. Feedback made available to the Committee clearly indicates that these institutional mechanisms under the Juvenile Justice Law are yet to be established in many states and wherever established cannot be considered to be performing their mandated task. The Committee would appreciate if an assessment of all such functionaries is made to so as to have the real picture of the ground realities. Inputs provided to the Committee in this regard can be easily acted upon in coordination with NCPCR and other stakeholders. The Committee is of the view that an exclusive law on protection of children from sexual offences should have all the allied aspects. However, mere inclusion of such provisions would not serve the purpose. It has to be ensured that all the institutional arrangements are also made fully functional.

Effective justice delivery process for child victims

3.6 While interacting with representatives of organizations working for child welfare, Committee's query about specific problem-areas being faced while providing legal support to child victims elicited very serious shortcomings in the existing justice delivery process. It was mentioned that child-friendly legal proceedings established through various Supreme Court and High Court judgments as well as amendments to CrPC and Indian Evidence Act were not being properly followed. Some of the drawbacks noticed are indicated below:

- Courts are not child-friendly and the whole atmosphere is intimidating.
- Lack of adequate legal provisions to cover all forms of sexual offences against children and no protection at all for boys.
- Insensitive police, medical and court procedures.
- Delay in registering cases as well as in trials.
- Absence of counseling.
- Absence of legal aid by lawyers trained in child rights and child protection.
- Absence of services of translators and interpreters in courts.
- Victims invariably made to come to the courts on separate days for evidence and cross-examination proceedings.
- Protection orders are rarely granted by the courts and when granted are flouted by the police.
- Victim protection and witness assistance measures are highly inadequate.
- Lack of resources and infrastructure with law enforcement agencies and justice delivery systems keeps them away from following child-friendly and child-sensitive procedures.
- Guidelines laid down to protect the privacy and confidentiality specially of victims of sexual offences and children often flouted by media.

3.7 The Committee observes that while some of the problem-areas as indicated above have been taken care of in the proposed legislation, it cannot be said that judicial process as reflected therein would be child-friendly and sensitive to special needs of traumatized child victims. The Committee would be making its observations/recommendations for modification of proposed provisions/addition of new provisions in this regard in relevant paragraphs of the Report.

Training of functionaries dealing with Child victims at different levels

3.8 One view-point which was emphatically raised by many stakeholders before the Committee related to lack of sensitization and required training noticed in different

functionaries involved in child welfare activities. The Committee notes that this gap has also been commented upon in the Study on Child Abuse conducted by the Ministry in 2007. The Committee has been informed that there is a well-structured system of training programmes conducted by different authorities both at Government and NGO level. Following are some of the training and capacity-building programmes being conducted at present:

- Advanced Diploma Course on Child Guidance and Counseling and one-month Certificate Course on Child Rights and Child Protection conducted by NIPCCD.
- Training for members of Juvenile Justice Boards, Child Welfare Committees, Police, Social Welfare Officers, Probation Officers, institutional staff and NGOs working in the field of Juvenile Justice conducted by the National Institute of Social Defence under the Ministry of Social Justice and Empowerment.
- Innovative and interactive Juvenile Justice training programmes for magistrates, judges and members of JJBs and CWCs conducted by the National Judicial Academy, Bhopal.
- Basic and in-service training programmes for IPS officers at various levels conducted by the Police Academics at Hyderabad and Shillong.
- Certificate, diploma and degree courses on human and child rights offered by several Indian Universities/institutions.

3.9 The Committee appreciates the variety of mechanisms available for training of different categories of functionaries. The Committee would, however, like to emphasize that it would be appropriate to make an assessment of all the training programmes being conducted by different agencies so as to ensure that benefits of such programmes are availed by all concerned. Co-ordination and monitoring by the Ministry in this vital area will make the difference.

Monitoring Mechanism

3.10 The Committee observes that formulation of any law undergoes a number of phases. Before bringing any proposed legislation before the Parliament, consultation exercise with all the stakeholders is undertaken, and after the Parliament scrutiny, the law gets enacted. However, fulfillment of the objectives of the law is the real test. This can be achieved only on the implementation of the law with benefits reaching those for whom it was enacted. Nobody can deny that monitoring at different levels is the most crucial

component especially for laws like the proposed legislation meant for the most vulnerable segment of the society. On this issue being raised with the stakeholders, a number of suggestions were put forth before the Committee, as indicated below:

- A Committee of experts comprising of medical, legal and social work professionals along with Government enforcement authorities to be appointed at the state and district level to advise the State Governments and periodically review the implementation of the Act.
- High Courts and District Courts to periodically review the performance of the Designated Special Court under this Act.
- A group of lawyers, social work and counseling professionals to be made available for the courts and victims of abuse to avail free services and the State Government to pay for these services.
- The Ministries of Home Affairs Law and Justice and Women and Child Development in consultation with the Chief Justice of various High Courts will have to evolve a mechanism to monitor the cases as they traverse through the Criminal Justice System.
- Periodic monitoring and evaluation mechanism regarding the implementation of the proposed legislation may be developed by NCPDR and SCPCRS and the details may be included in the Rules to be prescribed under the Act.
- NALSA and State Legal Services Authorities can be given the responsibility of monitoring.

3.11 The Committee understands that on Juvenile Justice, the Supreme Court had decided to designate a High Court Judge or a Committee of High Court Judges in every state to monitor the implementation of the Juvenile Justice Act. Wherever such Committees exist, there has been a great improvement. The Committee feels that a similar mechanism for this Bill will also be required. Perhaps the mandate of Juvenile Justice Committees of High Courts can be extended with suitable adaption to cover matters of sexual offences against children also. The Committee strongly feels that an effective and functional/monitoring mechanism will have to be evolved for the proposed law. The above suggestions given by stakeholders working in the field deserve full attention by the Ministry as well as the implementing agencies. The Committee would appreciate if the Ministry initiates action for having a monitoring mechanism in advance.

Public awareness about the Act

3.12 In view of the proposed legislation being a special criminal and social law, the Committee is of the view that society as a whole and all concerned envisaged for its implementation and also the children to the extent possible will have to be made aware about its mandate and outreach. The Committee will like to draw the attention of the Ministry to the following steps which can be taken:

- **easy to understand materials in regional languages on the law need to be developed**
- **Workshops specially seminars for implementing agencies can be organized.**
- **Both children as well as their parents/guardians to be sensitized about the subject of sexual offences against children and the law with the objective of empowering them about their rights and duties.**

3.13 The Committee is also of the view that as in the Protection of Women from Domestic Violence Act, 2005, a provision may be incorporated in the Bill which would place an obligation on Central and State Governments to spread awareness through different means and mechanism.

Role of NCPCR/SCPCR

3.13 The Committee observes that in the present Bill, no role has been envisaged for the National Commission for Protection of Child Rights (NCPCR) and State Commissions for Protection of Child Rights (SCPCR). As a monitoring body, NCPCR is already looking into the enforcement part of the existing laws as well as the complaints of the child abuse. NCPCR during its deposition before the Committee had strongly argued that they monitor the gaps and lapses in the implementation of the law and also spread public awareness on child sexual abuse.

The Committee observes that NCPCR has been mandated to take *suo-motu* notice of the following:

- deprivation and violation of child rights;
- non-implementation of laws providing for protection and development of children; and
- non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of children and to provide relief to such children.

The Committee also feels that keeping in view the tasks assigned to it, NCPCR may be rightfully considered for a monitoring role under this Bill as envisaged to it under section 31 of the RTE Act, 2009. The NCPCR could widely publicize the provisions of the Bill and could get appropriate training and orientation programmes organized for concerned stakeholders. It may also undertake a periodic evaluation study of the implementation of the proposed legislation and recommend corrective measures to fill in the gaps in its implementation. Similar role could be envisaged for SCPCRs also. **Details for periodic monitoring and evaluation mechanism could be provided in the Rules to be framed under the Act.**

IV. The Committee makes the following observations/recommendations on some provisions of the Bill

Clause 1: Short title, extent and commencement

4.1 Sub clause (1) dealing with short title of the Act reads as follows:-

"This Act may be called the Protection of Children from Sexual Offences Act, 2011".

4.2 It was pointed out by the stakeholders that the "preventive aspect" has not been given due importance in the Bill. It focused more on the situations where sexual violence, abuse, exploitation of the child had already taken place. It was argued that prevention was always better than cure especially when it was about sexual abuse of a child. It was, accordingly, suggested that the title of the Bill should be "the Protection of Children and Prevention of Sexual Offences Bill, 2011".

4.4 **Keeping in mind the mandate of our Constitution and our commitment to international conventions, it is incumbent upon the State to create an environment or a culture where children feel safe and secure. Our first commitment towards achieving this should be sensitizing vulnerable children about sexual offences. This could be done by incorporating an education module on sex education in the school education system itself. Besides that, all those involved in the bringing up of children and responsible for their education have to be sensitized about the vulnerability of children and need for protecting them from sexual offences. The Committee,**

accordingly, recommends that strong protective and preventive measures may be incorporated in the Bill itself to the extent possible and if need be, in the rules and guidelines to be made thereunder to prevent the instances of sexual offences against children. Specific provisions/mechanism for sensitizing children, parents, teachers, peers should be prescribed. The Committee, therefore, suggests that preventive aspect has to be reflected in the Bill by incorporating appropriate/relevant provisions thereunder. However, the Committee feels that the proposed title of the Bill already covers both preventive and protective aspects. With the interpretation in the right perspective, preventive aspects can easily be included under the Bill. Thus, no change is required to be made in the title of the Bill.

V Clause 2: Definitions

5.1 Clause 2 of the Bill deals with definitions. Sub-clause 2(d) defines the term 'child' as "any person below the age of eighteen years save as provided otherwise".

5.2 It was pointed out that the words "save as provided otherwise" should be deleted from the provision to remove any misunderstanding or confusion. The proposed definition tended to create an exception which was not required.

5.3 The Ministry justified the wording by stating that it was not always the adult who committed an offence against the child. There was a need to protect children from sexual abuse by their own peers and relatively older children. Further, the definition was in consonance with the Juvenile Justice (Care and Protection of Children) Act, 2000 and the United Nation Convention on the Rights of the Child (UNCRC) to which India was a party.

5.4 **The Committee observes that the Juvenile Justice (Care and Protection of children) Act, 2000 also defines the juvenile or child as a person who has not completed eighteen years of age. This definition is not qualified by the words "save as otherwise provided". On the same analogy, the Committee also feels that the words "save as otherwise provided" be removed from the provision to avoid any misunderstanding.**

5.5 Clause 2(i) defines the term 'shared household' to read as follows:-

"Shared household means a household where the person charged with the offence lives in a domestic relationship with the parent of the child and the child".

5.6 Committee's attention was drawn to the fact that the definition would not be covering a situation where the parents of the child affected were deceased or otherwise absent from the house. Further, it was not necessary that the parents resided in the same household as the child. Therefore, it was suggested to amend the definition of shared household to read "shared household means the household where the person charged with the offence lives or at any stage has lived in a domestic relationship with the child". The Ministry reasoned that under the Protection of Women from Domestic Violence Act, 2005, the domestic relationship meant a relationship between two persons who lived or had at any point of time lived together in a shared household, who were related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or were family members living together as a joint family." This formed part of the relationship covered with respect to the child victim under section 4(n) and was used to identify adult offenders who were related to the child either directly or through the child's parents.

5.7 The Committee feels that the definition of the term "shared household" in the Protection of Women from Domestic Violence Act, 2005 pertains to ownership, right, title, interest and equity of the household by the aggrieved person or the respondent or both. The purpose of the definition of "shared household" in the proposed legislation is vastly different from that of the Protection of Women from Domestic Violence Act, 2005. Therefore, the Committee recommends that the suggested amended definition be included in the Bill.

5.8 Clause 2(j) of the Bill defines the term Special Court to mean "a court designated as such under section 28.

5.9 The Committee notes that the proposed law primarily emanates from our 1992 ratification to UNCRC 1989 after which the Commission for Protection of Child Rights Act, 2005 was enacted. Under section 25 of the National Commission for Protection of Child Rights Act, State Governments have the option of setting up of the Special Court. Similarly, the proposed legislation also envisages the setting up of Special Courts under clause 28 and, accordingly, the definition has been provided under clause 2(i). It was pointed out that the Special Courts set up under the NCPCR Act and Special Courts envisaged under the proposed legislation would not only be having the same status but also there was a likelihood of overlapping so far as their domain was concerned. It was, accordingly, suggested that there should be no distinction between the Special Courts set up under the two laws. It would result in better coordination and smooth functioning, thereby leading to viable and effective justice delivery system. The following definition of term ‘Special Court’ under clause 2(j) was suggested:

“Special Court means a Children’s Court designated as per section 25 of the Commissions for Protection of Child Rights Act, 2005 and as such under section 28 of this Act.”

It was also indicated that on the same analogy, Special Court as provided under section 28 and the related procedures and powers of a Special Court provided in Sections 33 to 38 of the Act means a Children’s Court as designated under Clause 25 of the CPCR Act. On this suggestion being taken up with the Ministry, it was indicated that without any modification in the definition of the term ‘Special Court’ given in clause 2(i), the applicability of Children’s Courts set up under the CPCR Act on the proposed legislation may be included as a proviso in clause 28(1) in the following manner:

“Provided that if a court of session is already notified as a Children’s Court under the CPCR Act and/or Special Court under any other law for the time being in force then it shall be deemed to be a Special Court within the provisions of this Act.”

5.10 The Committee observes that it is a fact that creation of multiple courts/legal infrastructures will serve no useful purpose. Wherever, the legal framework has been created under the Commissions for Protection of Child Rights Act, 2005 the same should be used for the purposes of the proposed law. The Committee, accordingly, recommends that proviso to clause 28(1) as mentioned above may be added.

VI Clause 3: -- Penetrative Sexual Assault

Clause 7: -- Sexual Assault

6.1 Chapter II of the Bill deals with sexual offences against children and punishments prescribed therefor. Sexual offences have been specified in five categories. Clauses 3 and 7 deal with the two categories that specify the different kinds of assault. During the course of deliberations with various stakeholders, very pertinent and serious reservations were voiced on these two provisions. The first reservation voiced by NCPCR related to generality of the term 'penetrative sexual assault', giving no indication of the content of offence. It was also pointed out that the word 'assault' connoted a far lesser offence under the penal law, thereby undermining the gravity of the offences sought to be proscribed by this provision. It was felt that neither the nature of the wrong-doing nor the harm inflicted on the victim was being conveyed due to such a term being used. It was, accordingly, suggested that distinct offences be labeled individually instead of being grouped together under a general term like 'penetrative sexual assault'. Similar objections were raised with regard to clause 7 relating to 'sexual assault'. It was felt that this definition grouped offences which were clearly perverse with those which may seem relatively innocuous and may hence require different degrees of punishment. It was also contended by NCPCR that across the world such conceptualization of sexual offences was now considered inadequate and hence the broader category of penetrative sexual offences was found acceptable. Since the law was to be dealt with by police and lawyers, it was essential that the crimes were described clearly. Generic terms, such as, sexual assault could cause confusion both for the investigation agencies and the courts.

6.2 On this issue being taken up with the Ministry, the Committee was informed that very explicit words and expressions had been used by NCPCR for describing offences. These descriptions were unduly offensive without any added value in terms of clarity. It was pointed out that while fair labeling of offences and clear definitions were desirable, use of unduly explicit and offensive descriptions could be counter-productive and might invite criticism, Ministry's viewpoint was that the offence of penetrative sexual assault in their Bill covered all the situations that were in the NCPCR Bill.

6.3 The Committee is inclined to agree with the justification given by the Ministry with regard to clauses 3 and 7 relating to penetrative sexual assault and sexual assault respectively. The Committee is also of the view that sexual offences as defined in clauses 3 and 7 cover all the likely situations to be covered thereunder. The Committee would like to point out that Indian culture and our society even today, inspite of great advancement and global connectivity leading to exposure to western culture, retain their special identity which cannot be as open as the western world so far as the subject of the proposed legislation is concerned.

6.4 Another objection raised was that sexual offences as defined indicated a male bias, ignoring the fact that even a boy could be a victim. The Committee notes that as per the General Clauses Act, 1897 in all Central Acts and Regulations, unless there is any thing repugnant in the subject or context, words importing the masculine gender shall be taken to include females.

6.5 Committee's attention was drawn to the following identical proviso to clauses 3 and 7:-

"Provided that where such penetrative sexual assault is committed against a child between sixteen to eighteen years of age it shall be considered whether the consent for such an act has been obtained against the will of the child or the consent has been obtained by use of violence, force, threat to use force, intoxicants, drugs, impersonation, fraud, deceit, coercion, undue influence, threats, when the child is sleeping or unconscious or where the child does not have the capacity to understand the nature of the act or to resist it."

6.6 It was contended by the stakeholders that the proposed provisos were completely erroneous, misleading and against the interests of the children. Such a provision would completely negate our legal commitments under UNCRC 1989/1992 and JJ Act 2000/2006. Whereas the declared age of the child in these enactments was 18 years, in the proposed legislation for children between 16-18 years, these provisions were not made applicable on them. Clause 2(d) of the Bill defines 'child' as any person below the age of 18 years, which is the declared age of the child in other similar enactments. The provisos convey that children between the ages of 16-18 years are to be treated

differently and can be outside the ambit of the provision. It was further stated that this provision had been borrowed from section 375 of IPC in which a man did not commit rape while having sexual intercourse with the woman of 16 -18 years if there was a consent for the same. Another argument given against having the component of consent for children between 16-18 years was that it would invariably lead to cross-examination of a victim and would make the entire trial process central to the conduct of the victim rather than that of the accused. It was felt that unequivocal voluntary agreement for a specific and limited act only could be dangerous as it would put the victim to unnecessary questioning to decide on whether the sexual act that took place was different from the one for which willingness was expressed. Another discrepancy pointed out by the stakeholders was that for much graver crimes like 'penetrative sexual assault in clause 3 and 'sexual assault' in clause 7, the age of the child has been kept at 16 years and for a much milder form of crime i.e sexual harassment in clause 11 the age of the child has been kept 18 years.

6.7 Justifying the provisions, the Ministry clarified that the definition of 'child' and the age of consent for sexual activity were two different issues. There was no contradiction in the definition of 'child' as provided in clause 2 (d) and the age group mentioned in clauses 3 and 7 as the age of consent had been kept at 16 years consistent with the provisions of section 375 and 377 of the IPC. The Bill also provided for a uniform age of consent for all the children irrespective of gender. Another justification put forth by the Ministry was that emerging social reality regarding awareness, understanding and exposure of the adolescents cannot be overlooked and it would cause more detriment to criminalize consensual action by children between 16 to 18 years of age.

6.8 The Committee notes that other enactments such as the Indian Majority Act, 1875, the Indian Contract Act and the Juvenile Justice (Care and Protection of Children) Act, 2000 define child as the one who has not completed 18 years of age. Further, the Prohibition of Child Marriage Act, 2006 stipulates that child means a person who, if a male has not completed 21 years of age, and if a female, has not completed 18 years of age. Only in the Immoral Traffic Prevention Act, 1986 a child has been defined as a

person below 16 years of age. It can, therefore, be concluded that for most of the enactments a child means a person below 18 years of age. The Committee would also like to point out that the contention of the Ministry that the age of consent kept at 16 years in clauses 3 and 7 is consistent with the provisions under IPC cannot be considered correct. A reading of section 375 of IPC clearly indicates that out of the six descriptions of rape given thereunder, only one condition mentions the age factor which says a rape will be committed with or without consent when the woman is under sixteen years of age. **Section 375 of IPC would operate in totally different circumstances when compared with the provisions in clauses 3 and 7 of the present Bill. The Committee is of the view that once the age of child has been specified as 18 years, the element of consent should be treated as irrelevant upto this age. Therefore, the provisos to clauses 3 and 7 of the Bill should be deleted to protect the rights of child and for the sake of protecting children against abuse. This would also be in consonance with the country's commitment towards UNCRC and the Juvenile Justice Act, 2000.**

6.9 The Committee has also a word of caution. By having the element of consent, the focus would be on the victim which would invariably lead to revictimisation of the victim in the hands of the justice delivery process and would be especially problematic when dealing with children. The Committee would like to point out that a great deal of jurisprudence supports the theory that law should move away from this classical approach of trials in such cases and focus on the conduct of the accused and the circumstances surrounding the offence rather than the conduct of the victim thereby obviating the necessity of lengthy cross-examination of the victim on the issue of consent.

VII. Clause 5: Aggravated Penetrative Sexual Assault and clause 9: Aggravated Sexual Assault

7.1 Clauses 5 and 9 define the offence of aggravated penetrative sexual assault and aggravated sexual assault respectively. Different situations which would establish the commitment of aggravated sexual assault have been specified in these two provisions.

7.2 Clauses 5(a) and (b) and 9(a) and 9(b) refer to a police officer and a member of the armed forces or security forces who commit penetrative sexual assault/sexual assault in different situations. It was pointed out that it was important to recognize victimization due to authority and control exercised by the police and the armed forces or security forces. There may be a situation where a subordinate personnel who was having custody of the child on behalf of his superior committed penetrative sexual assault/sexual assault. Therefore, clauses 5(a) and (b) and 9(a) and (b) should read as "on a child in his custody or in the custody of police/personnel of the security forces subordinate to him". Another aspect pointed out was that the superiors who failed to use their position to protect the child should also be penalized.

7.3 The Committee feels that the concerns raised by the stakeholders are valid as these clauses appear to be restrictive and would not cover the situation where a subordinate personnel may take the child in his custody. Therefore the amendment as suggested above may be carried out.

7.4 Clauses 5(d) and 9(d) enumerate places where aggravated penetrative sexual assault/aggravated sexual assault on a child may take place. The clause reads:-

"whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection".

7.5 The concern of the stakeholders was that to ensure that children were protected in all settings, it was important to specifically include certain settings that tend to get overlooked. It was, therefore, proposed that the clause may be amended to read:

"whoever being on the management or on the staff of a jail, special home, observation home, protection home or other place of custody or care established by or under any law for the time being in force including a reception centre or institution working with women and children with mental and/or physical disabilities, commits penetrative sexual assault on any child being inmate of such jail, special home, place or institution; or, other place of custody or care and protection."

7.6 The Ministry, justifying the provision stated that this provision covered many places of custody or care and protection. There could be many such places and it was not possible to list all and it may not be feasible to name them all in the clause. The words, "or other place of custody or care and protection" cover all possible places of care and protection. The Committee, however, observes that the provision may be made more expressive to cover all possible places where penetrative sexual assault/sexual assault may take place on a child. The Committee accepts that there may be places still left uncovered which can be taken care of under the general phrase occurring at the end to the provision. Clauses 5(d) and 9(d) may be substituted as indicated above.

7.7 Clause 5(f) reads as follows:-

"whoever being on the management or staff of an educational institution, commits penetrative sexual assault on a child in that institution; or"

Clause 9(f) is also similarly worded.

7.8 It was suggested to expand the scope of this clause to include family/independent doctors, NGOs, individual priests/pujaris/maulanas and religious institutions where children specially young males were sent and were placed in the hands of the heads of Muths, Madarasas and Monasteries. The Committee is of the view that along with educational institutions, religious institutions may also be brought under these two provisions. Necessary changes may, accordingly, be made these sub-clauses.

7.9 Clause 5(g) refers to gang penetrative sexual assault. Similar provision is there in clause 9(g) also.

7.10 It was observed by the stakeholders that gang penetrative sexual assault needs an explanation to clarify what constituted a gang. It was contended that such an explanation was necessary because it was the first time that such a terminology had been used in the context of sexual assault. On this issue being taken up with the Ministry, it was suggested that the following explanation may be added to the provision :

"Where a child is subjected to sexual assault by one or more in a group of persons acting in furtherance of their common intention, each of such persons

shall be deemed to have committed gang penetrative sexual assault within the meaning of this sub-section".

The Committee recommends that clauses 5(g) and 9(g) may be modified accordingly.

7.11 Clauses 5(h) and 9(h) refer to use of deadly weapons fire, heated substance or corrosive substance while committing penetrative sexual assault/sexual assault.

7.12 It was felt that any qualification of weapons would be unnecessary and that the clauses should just read "commits penetrative sexual assault/sexual assault with weapons, instruments or substances". Ministry's clarification was that the expression 'deadly weapons, fire, heated or corrosive substance' was added only after detailed consultations with NCPCR and other stakeholders and removing these qualifications would not make any difference to substantive offence defined in these sub-clauses. **The Committee also feels these provisions require to be made more elaborative and therefore, may remain included as proposed.**

7.13 Clauses 5(i) and 9(i) read "whoever commits penetrative sexual assault/sexual assault causing grievous hurt or causing injury to the sexual organs of the child;"

7.14 It was strongly argued by the stakeholders that the wording of these two clauses gives the impression that grievous hurt or injury was confined to the sexual organs of a child. This should be changed to ensure that the provision covered grievous hurt or injury to other or any part of the body of child. The Committee also feels that the clause was required to be stated comprehensively to cover grievous injury to other body parts of the child as well. The Committee, accordingly, suggests that the clause may be amended as follows:-

"Whoever commits penetrative sexual assault/sexual assault causing grievous hurt to the child or causing bodily harm and injury including injury to the sexual organs of the child".

7.15 Clause 5(j) and 9(j) provide that whoever commits penetrative sexual assault/sexual assault on a child, which—

- (i) physically incapacitates the child or causes the child to become mentally ill or to become mentally unfit to perform regular tasks, temporarily or permanently; or*
- (ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;*
- (iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, mentally ill or mentally unfit to perform regular tasks; or*

7.16 The stakeholders raised strong objections to the wording of these sub-clauses. The words "or to become mentally unfit to perform regular tasks temporarily or permanently" were said to be conveying wrongly the impaired functioning caused by mental trauma affecting the well being of the victim. It was suggested that these sub-clauses can be divided as (i) physically incapacitates the child; or (ii) causes the child to become mentally ill as defined under the Mental Health Act, 1987. **The Committee also feels physical and mental incapacity are two different issues and usually mental trauma is not indicated through obvious manifestations but is understood through various behavioural and emotional indicators and to assess the mental incapacity trained professionals are required. Therefore, the Committee suggests that the clauses 5(j) and 9(j) may be reworded as "“Physically incapacitates the child or causes the child to become mentally ill as defined under the Mental Health Act, 1987 or causes impairment so as to render the child unfit to perform regular tasks, temporarily or permanently.”**

7.17 Clauses 5(s) and 9(s) refer to sectarian violence and read "whoever commits penetrative sexual assault/sexual assault on a child in the course of communal or sectarian violence;"

7.18 Some reservations were expressed by the stakeholders regarding the term 'sectarian violence'. It was suggested that it would be useful to explain the term sectarian violence. The clarification given by the Ministry was that the interpretation of situations of sectarian violence may be best left to the judgement of the courts and that this Bill was not the right place to attempt a definition of sectarian violence. **The Committee agrees with the Ministry's stand.**

7.19 **The Committee also feels that some provision protecting the interests of Children belonging to Scheduled Castes and Scheduled Tribes should be added to the clause. The Committee's recommendation is based on the premise that SCs/STs are still marginalized groups in the society and there are cultural and social practices that make them more vulnerable to sectarian violence. Accordingly change may be effected in clause 5(s) and 9(s). The Committee would also like to mention that as indicated by some stakeholders, clauses 5 and 9 do not address harmful cultural practices which are considered legitimate within certain communities which may harm generations of children within that community. The Committee notes that such protection has been afforded to adults under the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act and hence ought not to be taken away from children. The Committee, accordingly, recommends that appropriate provision covering such situations may be added under clauses 5 and 9.** Another suggestion which came before the Committee was the addition of the following provision under clauses 5 and 9:

Whoever commits penetrative sexual assault/sexual assault on a child and makes the child to strip and/or parade naked in public.

The Committee notes that the above suggestion has been found acceptable by the Ministry.

VIII. Clause : 16 Abetment of an offence

8.1 Clause 16 provides for the definition of the term 'abetment of an offence' as follows:-

A person abets an offence if he instigates any person to do that offence; or engages with one or more other person or persons in any conspiracy for the doing of that offences, if any act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that offences; or intentionally aids, by any act or illegal omission, the doing of that offences.

8.2 It further clarifies that a person who, by willful misrepresentation, or by willful concealment of a material fact, which he is bound to disclose, voluntarily causes or

procures, or attempts to cause or procure a thing to be done, is said to instigate the doing of that offence. It also clarifies that whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act and thereby facilitates the commission thereof, is said to aid the doing of that act.

8.3 It was pointed out by some of the stakeholders that instead of laying down a detailed section on abetment, including punishment for abetment, only a reference of sections 107, 108 and 109 of IPC should be made in clauses 16 and 17. The Committee, however, finds no harm in having self-contained provisions on abetment in the Bill.

8.4 One of the stakeholders heard by the Committee strongly advocated inclusion of human trafficking under the provision of this clause. It was felt that such an inclusion would result in commercialization of sexual abuse of children being dealt with firmly and without any loopholes in such instances. Following new clause 16 A was suggested for addition after clause 16:

“Whoever aids or abets any offence under this Act by way of human trafficking in children, running brothels or providing facility to run brothels, facilitate or allow continuing offences against children in their own premises, pimps, the financiers, transporters, those who keep the children in view of committing an offence and everyone who helps in the process, either by active support, or neglect of their duty to take immediate action as are the investigating and enforcement officers or who receive favours for not acting to prevent offences against children or to protect them, shall be treated as having committed such offence or as continuing to commit such offence.”

8.5 The Committee observes that the problem of child trafficking has very serious dimensions due to the increasing number of such cases. It was informed that the Government of India has estimated that more than 30,000 child prostitutes were trapped alone in six metro cities. Children were being trafficked in large numbers for forced labour, for sale in brothel houses, for marriage, adoption etc. Child trafficking which took place at inter-district, inter-state and inter country levels was very much associated with demand and supply trends with profit as the prime motive. The Committee was informed that a Protocol for Pre-Rescue, Rescue and Post-Rescue Operations of Child Victims of Trafficking for Commercial Sexual Exploitation was formulated in 2005. This Protocol being widely used by State Governments contains a strategy for rescue

teams concerning pre-rescue, rescue and post-rescue operations and for rehabilitation of children, who are victims of trafficking for commercial sexual exploitation.

8.6 The Committee was given to understand that the term ‘trafficking’ itself has not been legally defined under any Act. There, was only one legislation i.e. the Prevention of Immoral Trafficking Practices Act which dealt with trafficking and sale of children in the brothel houses. Its tardy implementation had so far failed to make any visible impact. **The Committee feels that this serious problem involving many complexities has to be dealt with by the use of effective legislative provisions with an in built monitoring mechanism and required implementing agencies in place.**

8.7 The Committee is of the view that with increasing trend of child trafficking cases and no exclusive legal mechanism therefor, there is a need for taking some initiative in this direction. It is true that child trafficking cases may not always relate to sexual exploitation, but whenever there is such an instance, it has to be curbed effectively for which legal support is essential. The proposed legislation deals with all kinds of sexual assaults and harassments mainly on individual basis. However, in child trafficking cases, the perpetrator may not be directly considered an offender. This category of sexual exploitation of child victims has also to be addressed. Accordingly, inclusion of a viable provision as indicated above in clause 16 can be the first move in this direction. The Committee would also like to point that since India has ratified the Convention on Transitional Organized Crimes and its Optional Protocol on trafficking in human beings, it becomes even more necessary to define ‘child trafficking for sexual purposes’ in the proposed legislation. The Committee notes that UK has a special legislation called the UK Sexual Offences Act, 2003 which contains detailed provisions on trafficking. This law defines three categories of trafficking-traffic into the UK for sexual exploitation, trafficking within the UK for sexual exploitation and trafficking out of the UK for sexual exploitation. The Committee feels that these provisions may be adapted in line with ground realities in our country in the proposed law for protecting of child victims. Another allied aspect which relates to child trafficking cases is the preventive measures for such violations. Here also UK law has a special

provision. The Committee would appreciate if this area is also covered under the proposed legislation

IX. Clause 19: Reporting of offences

9.1 Clause 19 which makes provision for reporting of offences reads as under:-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any person (including the child), who apprehends that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to-

- (a) the Special Juvenile Police Unit; or*
- (b) the local police;*

(2) Every report given under sub-section (1) shall be-

- (a) ascribed an entry number and recorded in writing;*
- (b) be read over to the informant;*
- (c) shall be entered in a book to be kept by the Police Unit.*

(3) Where the report under sub-section (1) is given by a child, the same shall be recorded under sub-section (2) in a simple language so that the child understands contents being recorded.

(4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter shall be provided to the child if he fails to understand the same.

(5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection (including admitting the child into shelter home or to the nearest hospital) within twenty-four hours of the report, as may be required.

(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.

9.2 Strong objections were raised by the stakeholders on the proposed provision. It was felt that a child could not be made responsible for reporting the offence on an apprehension that an offence was likely to be committed. NCPCR was of the view that firstly such a reporting on the part of the child (whether as a victim or a witness) should be optional and not mandatory. As a general rule, mandatory reporting was counter-productive. Secondly, it may hinder children and parents from seeking professional help, like medical or psychiatric services. Thirdly, provision for an interpreter or translator

may prove to be of help only when a child did not know language. But it may not be sufficient in all circumstances specially when the child was disabled.

9.3 The other objection raised was that police may not be the best placed agency to assess whether the child required care and protection. Accordingly, it was suggested that it would be more suitable to shift these functions to another agency consisting of specialists who were better equipped to make such an evaluation. It was felt that duties of police may be specified; indicating the action to be taken by them at every step. The police on receipt of a complaint should call upon a case worker to provide support to the child. The case worker, then, would ensure medical examination, paper work, for forensic tests, counsel the child for seeking appointment of a Guardian-ad-litem through the Special Court. Report giving full details of assistance provided to the child will have to be submitted within 24 hours.

9.4 Another viewpoint put forth before the Committee was that reporting of offences should not be confined to only two authorities, i.e. Special Juvenile Police Unit and the local police. It was suggested that the Child Welfare Committee, Childline and the District Child Protection Officer may also be the designated authorities for reporting of sexual offences. However, it was pointed out by the Ministry that the Special Juvenile Police Unit or the local police was the competent authority for lodging a complaint under the law and initiating further legal process. Besides that, a complaint made to the Child Welfare Committee or Childline would also have to be forwarded to the SJPU or the local police as they were the best facilitators for this purpose. It was also clarified that including them as reporting authorities may be misleading and also lead to delay in reporting of cases.

9.5 The Committee notes that as per section 63 of the Juvenile Justice (Care and Protection of Children) Act, 2000, the Special Juvenile Police Unit (SJPU) is to be set-up in each district. The unit consists of a Child Welfare Officer of the rank of police inspector and two paid social workers having experience of working in the field of child welfare, one of whom is a woman. The Child Welfare Officer is a person with aptitude and appropriate training and orientation to handle the cases of children. The SJPU co-

coordinates and functions as a watch-dog for providing legal protection against all kinds of cruelty, abuse and exploitation of child at the district level.

9.6 As informed by the Ministry, there were 660 SJPU's operating across the country. However, the feedback given by some stakeholders indicated that SJPU's were not functional in all the states and were not performing their mandated task. **The Committee is not aware whether any assessment about the functioning of SJPU's has been made either by the Ministry or any independent agency so far. If not, it is high time that such a study is got conducted so as to know whether such units have been set up in each district and wherever set up about their functional status. It is all the more required in view of the fact that mandate of SJPU's is going to be expanded under the proposed legislation. The Committee would also like to point out that the Child Welfare Committees set up in each district of the country under section 29 of the JJ Act are the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of children as well as to provide for their basic needs and protection of human rights. To say that these Committees will also have to report complaints of sexual offence to SJPU's or the local police does not seem to be the right argument. The Committee would like to point out that under section 32 of the JJ Act, besides any public servant, childline social worker, any child in need of care and protection may be produced before the Child Welfare Committee by any police officer or SJPU or designated police officer. Therefore, it would be in the fitness of things if the Child Welfare Committees like SJPU's or local police also become the designated authority to receive complaint from the child and report the matter to the Special Court after completing all the procedural formalities. The Committee, therefore, recommends that Child Welfare Committee may also be included under clause 19(1).**

9.7 Committee's attention was also drawn to the fact that as indicated in clause 19(1), listing apprehension as one of the factors for reporting child abuse cases was too far-fetched. Assessing apprehension itself may not be easy and that too by a child. The Committee, therefore, would like the Ministry to reassess this provision.

Another very pertinent issue raised was that the general public should be encouraged to report freely but their identities should remain confidential. There should be a provision on protection of a person reporting in good faith on the same pattern as the provision under the Protection of Women from Domestic Violence Act, 2005.

9.8 So far as reporting by general public is concerned, the Committee feels that general public should be encouraged to report and reporting in good faith must not invite civil or criminal liability. The Committee, accordingly, suggests that clause 19(2) may be re-worded as "No liability civil or criminal shall be incurred by any person for giving in good faith of information for the purpose of sub-section(1)". Numbering of subsequent sub-clauses may be modified accordingly.

X. Clause 21: Punishment for failure to report or record a case.

10.1 Clause 21 incorporates the provision for mandatory reporting and reads as under:-

(1) Any person, who fails to report an offence under sub-section(1) of section 19 or section 20 or who fails to record such offence under sub-section(2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

(2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.

(3) The provision of sub-section (1) shall not apply to a child under this Act.

10.2 Strong objections were raised by the stakeholders on the mandatory aspect of reporting of child abuse cases. The Committee was given to understand that due to social stigma, child's emotional attachment to the abuser etc reporting of abuse was not preferred in a large number of cases. It was contended that awareness on child abuse in India was lacking. Factors like social stigma, community pressure, difficulties of navigating the Criminal justice system, total dependency on perpetrator emotionally and economically, lack of access to support systems etc inhibited children and their families to seek redressal within the legal system. Some of the stakeholders suggested deleting the clause altogether.

10.3 The Committee strongly feels that given the situation prevailing at ground level, such universal mandatory reporting cannot be considered practical. It might act as counter-productive for the child victims themselves. For instance, if the parents choose not to report the matter to the police for the sake of protecting the child from social stigma, they would be seriously handicapped even to seek medical help for the victim.

10.4 One suggestion placed before the Committee was that mandatory reporting be limited to certain specific persons alone like-

- Any Child Care Custodian
- Health or Medical Practitioners
- Child Protection Agency Employees such as Childline, Juvenile Justice Functionaries
- Commercial Film and Photographic Print Processors
- Any establishment employing persons below 18 years of age.

The Committee finds the above suggestion justified and, accordingly, recommends that clause 21 (1) may be deleted and clause 21(2) may be redrafted. The Committee is also in agreement with the proposal to add Special Police Officer and Trafficking Police Officer so as to empower them to report for investigation of any possible commission of offence under this Act by any person whenever a child is rescued from a brothel house and it has been proved that such a child has been sexually violated during its stay there. The Committee accordingly, recommends necessary modification in clause 21.

XI Clause 22: Punishment for false complaint or false information

11.1 Clause 22 lays down the following provision in cases of false complaints or false information:-

(1) Any person, who makes false complaint or provides false information against any person, in respect of an offence committed on a child below the age of sixteen years, under sections 3,5,7 and section 9, solely with the intention to humiliate, extort or threaten or defame him, shall be punished with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where a false complaint has been made or false information has been provided by a child, being less than sixteen years, no punishment shall be imposed on such child.

(3) Where a false complaint has been made or false information has been provided by a child being more than sixteen years, and it is proved that the complaint was made or information was provided with his own informed decision and in such case, the child shall be sent to the Juvenile Justice Board constituted under section 4 of the Juvenile Justice (Care and Protection of Children) Act, 2000, for suitable remedial action.

(4) Whoever, not being a child, makes a false complaint or provides false information against a child, knowing it to be false, thereby victimizing such child in any of the offences under this Act, shall be punished with imprisonment which may extend to one year or with fine or with both.

11.2 Strong objections were raised by majority of the stakeholders on this provision. It was pointed out that a provision for punishment for false complaint or false information would defeat the very purpose of this law. Scope for misuse of any law cannot guide the formulation of a legislation meant to protect the vulnerable. Not only this, fear of reprisal would routinely prevent any person from coming forward and seeking protection against sexual abuse, thereby reinforcing the cycle of subjugation and violence.

11.3 On being asked to clarify the basis for having such a provision, it was informed by the Ministry that it was meant to work as a safeguard against misuse of the provision for presumption of offence in certain cases under clause 29 of the Bill, which shifted the burden of proof on the accused in case of the offence of sexual assault being committed on a child below 16 years of age. At the same time to prevent misuse of the law, deterrence in the form of punishment has been provided for making false complaint or providing false information with malicious intent. It was further clarified that the punishment proposed was relatively light, keeping in mind the need to encourage reporting of offences. Not only this, the children below 16 years of age were exempt from punishment to instill confidence in the child victim and witnesses to come forward.

11.4 The Committee observes that the National Commission for Protection of Child Rights, the statutory body at the national level meant to act as a watch dog for protection of child rights is in agreement with this provision. The Committee understands that the proposed law is meant to instill in children a sense of confidence to report abuse and exploitation instead of deterring them from

reporting. But at the same time, provision of this proposed law is not meant for settling scores and such attempts need to be curbed. The argument that the CrPC contains adequate provisions to deal with false complaints is also not very convincing. The Committee has observed that all such legislations invariably have a provision which would serve as a deterrent in case of false complaints being made. The only thing is to ensure that such a provision is free from any unnecessary or uncalled for stipulation.

11.5 The Committee notes that clause 22(1) makes a distinction between a false complaint/false information given by any person for an offence against a child below sixteen years and child between sixteen to eighteen years. The Committee is of the view that such a distinction is not well-placed. Any offence against a child below eighteen years in the proposed law is to be treated with the same gravity. Hence, any false complaint against a person having committed such an offence against a child has to be taken in that perspective, child being below 16 years or being between 16 and 18 years notwithstanding. Accordingly, the words 'below the age of 16 years' may be deleted from clause 22(1).

11.6 Similarly, in sub-clause (2), where a false complaint has been made or false information provided by a child, being less than 16 years, no punishment shall be imposed on such a child, should be applicable on children below 18 years. The Committee is also of the view that sub-clause (3) needs to be deleted as no exception on the definition of child below 18 years is justifiable. Such matters are to be referred to the Child Welfare Committee or Juvenile Justice Board as provided under JJ Act. Sub-clause (4) may, accordingly, be re-wounded as sub-clause (3).

XII Clause 23: Procedure for Media

12.1 Clause 23 lays down the procedure for media for reporting on sexual offence against a child reads as under:-

(1) No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, and without the consent of the child

or his parents or guardian, who may be involved in an offence under this Act either as an accused or as a victim, which may have the effect of lowering his character or infringing upon his privacy.

(2) No reports in any media shall disclose, without the consent of the child or his parents or guardian, the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child.

(3) The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee.

(4) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be liable to be punished with imprisonment of either description for a period which shall not be less than one year but which may extend to two years or with fine or with both.

12.2 The Committee observes that this clause lays down the conditions for reporting in media about sexual offences against children. Such reporting is to be based on complete and authentic information and with the consent of the child or his parents or guardian. The Child or parents or guardian may be involved in an offence under this law either as an accused or as a victim. Identity of the child could be disclosed in any media only with the consent of the child or his parents or guardian. The Committee finds these conditions to be very objectionable. Firstly, the question of seeking consent of a child victim should not arise as such an action is likely to further victimize the child victim as her/his traumatic state of mind would get aggravated. Secondly, parents or guardian who may be accused should not have the right to authorize giving of information in media. Similarly, as given in sub-clause (2), disclosure of identity on the consent of child/parents/guardians is also not desirable keeping in view the misuse/uncalled for publicity of such instances.

12.3 The Committee observes that this provision has also not found favour with NCPCR. Their view is that it is preferable to ensure that the confidentiality provision should be mandatorily observed and not waived at the option of child's parents or guardian. The Committee would like to draw the attention of the Ministry to section 21 of the JJ Act relating to prohibition of publication of name etc of juvenile in conflict with law or child in need of care and protection involved in any proceeding under the Act which categorically prohibits any kind of publicity by the media. The only exception is

that such permission can only be given by the authority holding the inquiry that too to be recorded in writing and if such disclosure considered to be in the interest of the child.

12.4 The Committee is of the view that the clause 23 of this proposed law may be modified in accordance with section 21 of the JJ Act. Punishment prescribed under sub-clause (4) may also be reduced accordingly.

XIII. Clause 24: Recording of Statement of a Child and Clause 27: Medical Examination of a Child

13.1 Clause 24 provides that while recording statement of a child, the provisions of section 157 of the Code of Criminal Procedure, 1973 shall apply. The clause further provides that if the statement of the child is being recorded under section 164 of the CrPC, the magistrate recording such statement shall record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence and wherever necessary, the magistrate may take the assistance of an interpreter while recording the statement of the child and in case of a child having a mental or physical disability seek the assistance of special educator or an expert in that field to record the statement of the child. Clause 27 provides for the medical examination of a child in accordance with section 164A of the CrPC irrespective of the fact whether or not an FIR or a complaint has been registered for the offence. According to the Ministry, these two clauses contain the investigation and medical process keeping in mind the best interest of the child and include child friendly provisions.

13.2 The stakeholders heard by the Committee pointed out that the objective of the law is to ensure child protection and establish child friendly procedures at all stages from reporting of an offence to investigation, trial and rehabilitation of the child victim. Therefore, the procedures to be followed by the police, courts and doctors should be spelt out clearly and distinctly. NCPCR also suggested that clause 24(1) should contain the provisions of section 157 CrPC with suitable modifications and it should read:-

"in relation to an offence, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her

parents or guardian or near relatives or social worker of the locality. It further suggested that if the police official was recording the statement of a child he shall state his name and designation to the child and/or support person and would also provide a copy of the statement to the child or the support person.

13.3 Another suggestion put forth by the stakeholders was that the section should be split into two segments providing separate procedures for recording of the statement of child by the police and the magistrate. Notable variables suggested for inclusion in the procedure to be followed by the police were recording of statement by a woman police officer in the case of girls and a male officer in the case of boys, not below the rank of sub-inspector; taking assistance of social worker, counsel or psychologist, translator and such other persons; child victim not to sign any statement, statement to be recorded at the residence of the victim or at the place where victim can make a statement without fear, child victim not to be kept in the police station overnight on any pretext including medical examination, investigation officer to ensure prompt medical examination and forensic examination; completion of investigation within 90 days and investigation to be supervised periodically.

13.4 Important variables to be included in the procedure to be followed by the magistrate were avoiding any adjournment in recording statements, magistrate/judge to record the statement in the hospital if the victim was in hospital, separate rooms with the court precincts for recording statement to create child friendly environment, child victim not to be separated from his/her parents/guardians, before handing over the child to her/his parents/guardians to ascertain their bona fide and that there was no likelihood of the child being in any danger or harm from them, if the child expressed fears on being handed over to his/her parent/guardians, the magistrate/judge to place the child in an appropriate institution and pass the matter to the concerned Child Welfare Committee or District magistrate/Collector and where such committees did not exist to make arrangement for suitable rehabilitation of the child, wherever possible the statement of the child victim to be video recorded and a child not to be sent to an institution meant for adults..

13.5 Committee's attention was also drawn to the fact that due to the lack of uniform special education facilities across the country and the children were not always in a position to communicate via any special educator or expert however well trained they may be. To take care of such contingencies, it was suggested that the second proviso to clause 24(2) may include the words 'any person' familiar with may reads as follows:-

"Provided further that the magistrate may in case of a child having a mental or physical disability, seek the assistance of a special educator or any person familiar with the communication of that child or an expert in that field, to record the statement of the child".

The Committee observes that the Ministry has found the suggestion acceptable. The Committee accordingly, recommends that necessary modification may be made in clause 24(2).

13.6 Similarly, regarding the medical examination of the child victim of sexual abuse, NCPCR and other stakeholders suggested detailed protocols to be followed by the medical practitioner. They also suggested that the State Governments should make available in every hospital a "sexual assault" forensic evidence kit with prescribed contents and should also ensure that the hospitals are equipped with the requisite apparatus and adequate pathological facilities for preservation of sample collected. The stakeholders also suggested setting up of special rooms for examination and privacy of the victim, allowing parents/guardians person trusted by the child to be present during medical examination, recording of assault history by the attending doctors, hospitals to co-operate with the police and preserve the samples in their pathological facilities, medical examination report to be prepared expeditiously, a copy of which to be given to the parents/guardian of the child victim, provision for emergence medical treatment of the child victim.

13.7 On this issue being taken up with the Ministry, it was clarified that the division of chapter VI relating to the 'Procedures for Recording Statement of the, child' would not serve any useful purpose as the substantive provisions were already indicated in clause 19 relating to reporting of the offence and recording of the complaint, clause 23 on non-

disclosure of the identity of the child, clause 24 relating to recording the statement of the child and clauses 25, 26 and 27 of the Bill to cover investigation and medical process to be followed in case of child victim of sexual abuse. It was emphasized that the provisions in these clauses were child friendly and the best interests of the child were being ensured. Regarding the medical examination protocol, Ministry's specific reply was that details would be provided in the rules to be framed under the Act and it was not necessary to spell them out in the principal Act.

13.8 The Committee would like to point out that as has been seen in the cases of the sexual abuse of women, their trials often lead to re-victimisation and ignominy, as the trial process itself makes the victim to relive the horrific experience. And, in the case of a child, due to her/his vulnerability it may lead to further trauma. It is also a fact that the existing institutional mechanisms have not proved to be adequate enough to address the sexual offence cases against both the women and children.

13.9 The Committee observes that where the accused is known to the victim or is part of the family, their families being under great pressure sometimes turn hostile in the court. Not only that, incest cases seldom get reported and when reported, do not proceed for too long and fall out in the course of the trial. Situation becomes more grave when the accused is a person in authority such as the superintendent of an institution or school principal or teacher etc. During its interaction with various stakeholders, it was emphasized that there were inadvertent delays in both medical examination and trials, inadequate protection for victims and witnesses inspite of there being prescribed guidelines. Committee's attention has been drawn by directions/guidelines given/laid down by High Courts in this regard. The Committee would particularly like to make a reference to the guidelines in a child abuse case detailing the role of police, medical examination, recording of statement before magistrate, Trial Court procedure given by Delhi High Court in WP (Crl.) No. 930/2007. In view of such a discouraging scenario and the acute sensitivity of the issue involved the Committee strongly feels that the detailed procedures as given in the aforesaid Delhi High Court guidelines and those suggested by NCPCR and

other stakeholders are valuable and merit serious consideration by the Ministry especially in the context that the proposed legislation has been brought from the perspective of the child welfare. The Committee, accordingly, recommends that Chapter VI relating to 'Procedures for recording statement of the child', particularly clause 24 and 27 may be reviewed and made more extensive in line with the suggestions made by NCPCR and High Court guidelines.

XIV. Clause : 28 Designation of Special Courts

14.1 Clause 28 deals with special courts and provides that for the purpose of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court and by notification in the official Gazette, designate for each district court of session to be special court to try the offences under the proposed legislation. In addition to the offences under the proposed legislation, the Special Court would also try an offence with which the accused may, under the CrPC be charged at the same trial and would further have jurisdiction to try offences under section 67 B of the Information Technology Act, 2000 in so far it relates to publication or transmission of sexually explicit material depicting children in any act, or conduct or manner or facilitates abuse of children online.

14.2 Two of the stakeholders had some reservations on clause 28. It was pointed out that establishing special courts and appointing special public prosecutors would be duplication of the provisions in the Commission for Protection of Child Rights Act, 2005 which provides for the constitution of 'Children's Court' and special public prosecutors to hear cases relating to child, thus leading to overlapping with Section 25 of CPC Act. Their argument was that wherever Special Courts have been designated under the Act of 2005 they may also be obligated to try offences under the proposed legislation. The NCPCR suggested that the State Governments should be obligated to provide appropriate infrastructure, facilities and human resources for the Special Courts to ensure that the quality of evidence given by the child is not diminished and the magistrate to exercise the powers of a magistrate and follow procedure as provided in the CrPC, 1973. Another

stakeholder advocated for expeditious designation of a Special Court/Children's Court in every district to fulfill the very purpose and spirit of the Act.

14.3 Ministry's reply to the suggestion of obligating children's courts, set up under the Commissions for Protection of Child Rights Act, 2005, to try offences under the proposed legislation also was that both the Commissions for Protection of Child Rights Act, 2005 and the proposed Bill provided for speedy trial of cases relating to offences against children. The only difference was that while the CPR Act gave the State, option of setting up a Special Court, the proposed Bill made it mandatory for states to set up such Special Courts. Thus, there was no contradiction between the CPR Act and the proposed legislation.

14.4 The Committee also feels that there should be no multiplicity of institutions i.e designated courts set up to address special situations would require infrastructure, trained manpower and other resources. The Committee suggests that wherever Special Courts have been designated under the CPR Act, 2005, they should try offences under the proposed Act also. Further, wherever, such courts have not been designated uptill now, they may be set up under the proposed Act expeditiously. Accordingly, clause 28 (1) may be amended to read as follows:-

"provided that if a court of session is already notified as a children's court under the CPR Act and/or Special Court under any other law for the time being in force, then it shall be deemed to be a Special Court within the provisions of this Act".

XV. Clause 33: Procedure and Powers of Special Courts and Recording Evidence

15.1 Clause 33 provides for procedure and powers of Special Courts. It provides that a special court may take cognizance of any offence upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts, without the accused being committed to it for trial. Sub-clause (7) of clause 33 provides that the Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial, except with the consent of the child or his parents or guardian. Explanation to the sub-clause provides that the identity of the child shall

include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed. Sub-clause (8) provides that in appropriate cases, the special court may, in addition to the punishment, direct payment of compensation to a child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.

15.2 NCPCR suggested inclusion of some special features like live-video link, use of one way mirrors and use of screen in this clause so as to ensure child-friendly procedure for recording the evidence of the child. Another objection raised was related to sub-clause (7). It was mentioned that under extenuating circumstances, what would be the authority of the parents or guardian to be able to make a decision to disclose identity of their child or ward with a full understanding of the far reaching implications on the well being of the child and even the family. Committee's attention was also drawn to the Immoral Traffic Prevention Act, 1956 which prohibited the publication of the name of a victim below the age of 18 years or the identification of the place of the offence so as to protect the identity of the victim. Same provision was there in respect of the Juvenile Justice Act.

15.3 Ministry's response to the objection was that while harmonizing provisions of different legislation was desirable, it was also a fact that jurisprudence was constantly evolving. At times, drafting a new law provided an opportunity to introduce a nuanced approach to an already accepted principle. In such cases, ensuring the right of the child to protect his identity was of paramount importance. At the same time, the child and his family should have the option to reach out to the larger community, whether to share the experience and spread awareness on the issue or to mobilize public opinion on the same. Therefore, provision has been made to allow disclosure of information about the child with the consent of the child or his parents or guardian while at the same time providing safeguards and punishment in case of such disclosure without consent. **The Committee, however, feels that the objections of the stakeholder are valid and the sub-clause needs to be reviewed and modified as indicated in the recommendation with respect to clause 23.**

15.4 Some objections were also raised with regard to sub-clause (8) of the clause. It was pointed out that the general philosophy underlying victims' compensation is expressed in the Preamble to the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by the United Nations General Assembly in 1985. The Declaration includes basic principles of restitution, that offenders should pay for the costs of their crimes-and state compensation where such costs are not recoverable from offenders or elsewhere, states should endeavour to provide financial compensation to such victims and their families. However, Section 33(8) of the Bill gave no clarity with regard to compensation as it was not mentioned if the compensation was to be paid by the perpetrator or by the State. It was important that the State compensated the victims of sexual offence as they were entitled to compensation for the mental, emotional and physical suffering they have endured as they Alternatively, as given in section 22 of the Protection of Women from Domestic Violence Act, the Court could direct the perpetrator to pay compensation and damages for the injuries such as mental, emotional and physical anguish undergone by the victim.

15.5 Clarification given by the Ministry was that this sub-clause should be left to the judgment of the courts to decide where it was appropriate to award compensation to the child. It may also be left to the court to decide the manner and quantum of the compensation to be paid as per available provisions in law or government schemes/programmes whether of the Centre or the State including a part of the penalty imposed on the accused to be paid as compensation. It was also mentioned that a considered view has been taken in consultation with the Ministries of Home Affairs and Law to leave the quantum of fine to the discretion of the court so as to address different situations as has been the case in IPC in respect of serious offences.

15.6 The Committee feels that the principle of leaving the discretion to the Special Courts to decide about the compensation may be done away with in respect of child victims. It would be in the spirit of the legislation to award compensation in each case, a part of which may come from the accused. The mechanism for having such a facility may be worked out in consultation with State Governments and other

stakeholders. Another alternative system which can be looked into is to set up a Fund under State Government/Special Court with initial contribution from the State Government and amount of penalty as and when imposed on the accused which can provide relief to the victims.

XVI. Clause 43: Power to make rules

16.1 Most of the stakeholders opined that the rule-making clause should indicate specific areas where rules were required to be framed. As many agencies/authorities would be engaged in the procedural/implementation aspects of the proposed legislation such as the police, medical, professionals, social workers, prosecutors, defense layers, judiciary, media etc, it would have been appropriate if specified areas were spelt out in the rule-framing clause itself. This is the well-established norm for all legislations being formulated.

16.2 Ministry's clarification on the issue was that the Central Government would be framing rules for better implementation and administration of the provisions of the Act. The Central Government may elaborate on the provisions for care and protection of child victims and witnesses to give effect to their implementation, such as but not limited to, procedures for reporting of an offence, procedures for recording statement of child, conduct of medical examination of a child, assistance of a special educator or an expert for the assistance of a child with mental or physical disability, assistance of an interpreter while recording the evidence of the child, presence of family member/guardian to assist the child at various stages of the judicial process, provision of compensation and its disbursement.

16.3 The Committee, is of the view that there should be no problem in laying down the specifications for rule framing or listing of areas where rules may be framed. This is the normal practice so far as rulemaking provisions of legislations are concerned. The Committee, accordingly, recommends that clause 43 may be modified accordingly.

XVII Clauses 4, 6, 8, 10, 12, 14 & 15 relating to punishments and fines for various offences committed under the Act

17.1 Clauses 4, 6, 8, 10, 12, 14 & 15 provide for punishments and fines for various sexual offences against children.

17.2 Two very valuable suggestions were put forth by the stakeholders on these clauses, one was for specifying a minimum amount of fine in each clause, which the Special Court on its discretion may extend corresponding to the gravity of the offence committed against the child and the other was that, in appropriate cases, the Special Court shall grant full or some portion of the fine amount as compensation to the victim.

17.3 Ministry's clarification on the issue was that a considered view has been taken in consultation with the Ministries of Home Affairs and Law to leave the quantum of fine to the discretion of the Special Court so as to address different situations as has been the case in IPC in respect of serious offences. Further the issue of compensation was addressed in clause 33 (8).

17.4 The Committee agrees with the Ministry's stand that the total quantum of fine to be imposed in each case should be left to the discretion of the courts. However, it also finds merit in the suggestion that minimum amount of fine may be specified in each of the punishment clauses. Above this minimum fine, it should be left to the court to fix total quantum of fine according to the gravity of offence.

XVIII. Conclusion

18.1 **The Committee believes that a legislation for the protection of children against sexual offences though not a complete remedy for the malady is a much needed one for ensuring a secure and carefree future for them. Sexual harassment of children, the most vulnerable segment of our society is a sad reality at present. It is an index of moral degradation of society in recent years. Although it is high time for such a law to come into effect, a legislation has its own limitations also. It entails the provision of a redressal mechanism for cases of sexual offences but cannot**

change the moral fabric of the society. It is where the need for high moral standards and element of protection for children, future of the country which has been the cherished goal of our social fabric is felt. The Committee would like to emphasize on the importance of inculcating such values in a child at tender age itself so that affection and love for children are imbibed and ingrained at the threshold itself.

19. The Committee adopts the remaining clauses of the Bill without any amendments.

20. The enacting formula and the title are adopted with consequential changes.

21. The Committee recommends that the Bill may be passed after incorporating the amendments/additions suggested by it. The Committee would also appreciate if the revised provisions as recommended by it are made available to it before the Bill is again brought before the Parliament.

22. The Committee would like the Department to submit a note with reasons on the recommendations/suggestions which could not be incorporated in the Bill.