

No.12(2)/2016-Coord.  
NATIONAL HUMAN RIGHTS COMMISSION  
(Coordination Section)

Dated: 30 November, 2017

C I R C U L A R

Subject: Minutes of the meeting with the Members of Core Group on International Conventions and Treaties held on 16.11.2017 in the Conference Room No.508, Manav Adhikar Bhawan, New Delhi –

A copy of the Minutes of the meeting with the Members of Core Group on International Conventions and Treaties related to Child Rights/Disability held on 16.11.2017 in the Conference Room No.508, Manav Adhikar Bhawan, New Delhi is enclosed herewith for kind perusal.

3. You are requested to take necessary action as per the decisions of the Meeting and send a detailed note to the Coordination Section by 08<sup>th</sup> Dec, 2017 positively.

Encl: As above.



( Dr. Ranjit Singh )  
Joint Secretary (P&A)

To

1. Registrar (Law)
2. JS(P&A)
3. DIG
4. Director(A)
5. JD(R ) Unit
6. JR(Law) In-charge
7. DD(M&C)/All DR(Law)
8. SSA / Sr.AO/SRO(T) Unit
9. Mr. Mustaba Hussain, JLRC
10. Mr. Jeetmanyu Sahoo, JLRC
11. Ms. Kannika Singh, JLRC
12. Ms.Sneha Yadav, JLRC
13. Ms. Nishitha Gupta, JLRC
14. Ms.Himani Kaushik, JLRC

NATIONAL HUMAN RIGHTS COMMISSION

**MINUTES OF THE MEETING WITH THE MEMBERS OF CORE GROUP ON  
INTERNATIONAL CONVENTIONS & TREATIES RELATED TO CHILD RIGHTS  
HELD ON 16<sup>th</sup> NOVEMBER 2017 AT MANAV ADHIKAR BHAVAN, NEW DELHI**

1. Core committee on the International Conventions and Treaties Meeting was held on 16<sup>th</sup> November 2017 in Room no. 512 of National Human Rights Commission at 10:30 a.m. which discussed the domestic laws, rules, policies and regulations in conformity with International Conventions which would further help in giving suggestions to Central Government to bring the circumference of Human Rights Law in India in conformity with International Convention and Treaties. **A list of participants is at Annexure.**
2. This was the second meeting in this regard. The Objective of the meeting was to identify and plug in the gaps between Domestic Legislations and International Conventions in the field of Child Rights and Rights of Persons with Disabilities by proposing an effective course of action. Justice H.L. Dattu, Hon'ble Chairperson, National Human Rights Commission welcomed the core group members. At the outset, the Hon'ble Chairperson said that this is the second meeting for filling the gaps between the International Conventions and treaties and Indian laws and legislations. To look for the areas of conformity and divergence between the International Conventions and Indian laws and legislation is an important issue. The Commission wishes to work closely with the core committee members for achieving this end. He stressed that the work with regard to the above mentioned two groups should be segregated and final draft prepared as early as possible.

3. The Agenda for the discussion was:
  - i. Convention on Child Rights (CCR), 1989
  - ii. Convention on Rights of Persons with Disabilities, 2006

The chairperson invited the suggestions of the Committee Members on the presentations given by the Junior Legal Research Consultants on both the above stated conventions.

### CHILD RIGHTS CONVENTION

4. The issues that arose with regard to the Child Rights Convention were as follows:
  - a) Harmonization of age of child was discussed in domestic laws keeping in mind the Child Rights Convention. Member Mr. Narender Singh, suggested that harmonization of age is needed but whether such a change is needed in labour laws or not is debatable. He suggested that children should not be allowed to work in certain occupations below the age of 18 years, but there must be certain occupations where they may be allowed to work keeping in view elements of socio-economic imperatives. Such occupations should be regulated and must have a safe working environment and the work conditions should not impede child's education. Examination of legislations which allow the practice of child labour in certain industries and regulation of these industries was suggested by him. Regulation may include duration of work, nature of work and other similar aspects. Mr. S.C. Sinha, Member NHRC added that to decide whether harmonization of age is needed or not, one needs to see practice viz-a-viz the provision viz-a-viz its implementation.

b) Children seeking Asylum and Refugees Mr. Ambuj Sharma, Secretary General , NHRC suggested that a special Act for refugee children may be examined to be enacted which will prescribe for "Stateless Category" to ensure social and economic rights to them. Though India has not ratified International Convention on Refugees, it was observed that such a domestic law would be effective in dealing with issues related to asylum and refugees. This would help GOI in documentation of such stateless persons with a proper data base. Mrs K C Soumya noted that three bills have been recently tabled related to refugee laws and observed that domestic laws need not be mirror image of international conventions but can have additional/ modified aspects added to them too to take into account India's specific issues.

c) The issue of Child Marriage was also discussed as to whether it should be void or voidable. Hon'ble Member Mrs. Jyotika Kalra pointed out that as per the recent Supreme Court judgment, sex with wife between the ages of 16-18 years amounts to rape which makes the 'voidable' status of a marriage insignificant. It was debated that this would make a large number of marriages void and the girls and parents would have to bear stigma of such marriage. Mrs. Jyotika Kalra pointed out that if we can stop marriages below the age of 18, it would be a wonderful contribution by considering her as an asset rather than a liability and same can be done by mass awareness.

- d) Member Mr. Sudhir Kumar highlighted that the GOI and state Governments have failed to ensure effective implementation of Right to Education. The numbers of enrollment in schools that come under the respective state governments have drastically decreased. Member, Mr. Narinder Singh also noted how various states have different age criteria for admission in schools which deny the right to education to a child. Member Mr. S.C. Sinha suggested that one should see if the obligation is cast on the state to provide education under the Child Rights Convention to know if harmonization is needed or not. The Committee debated how harmonization can be done for effective implementation of domestic laws with respect to quota in both government and private schools.
- e) Member Mr. Vinaysheel Oberoi suggested that Higher Education should be regulated in some form. He differed slightly from other members and did not approve of the idea of harmonizing the laws relating to child. He highlighted that there are enabling provisions to acquire knowledge and skill in the form of internships. He suggested that conditions in which they work should be regulated and there should not be exploitation in the garb of internships.
- f) With respect to Adoption, Member Mr. Narinder Singh noted that India is party to a Convention on Inter Country Adoption. He also stated that government is looking forward to provide recommendations on family adoptions whereby

suitability of the family adopting the child would be verified. Regarding family reunification, he noted that India cannot handle this issue alone and this needs to be taken with other countries on bi-lateral basis also.

- g) Another issue that came up was Trafficking. It was stated that India has ratified a convention on Trafficking in 2009, but till today no legislation has been formulated in this regard. This is a huge gap as we have obligations under the Convention, but the Government of India is not in position to implement the same.
- h) The problem of Maintenance and Parental Child Abduction was also highlighted by him. There are two Hague Conventions and he suggested India becoming a party to these conventions. Member Mrs. Jyotika Kalra noted that the Law Commission of India is considering this issue. She stated that recovery of maintenance is also a huge issue when the spouses live in different countries. There is a convention dealing with the same that eases the recovery by international bank transfers. This is another convention, she suggested, India should ratify. Furthermore, she was of the opinion that India should ratify another Hague Convention on Protection of Children which will supplement the rights of the child under the Child Rights Convention.
- i) Other suggestions:

Member Shri Yogesh Tyagi stated that this intellectual exercise has never been done before and suggested that it is important to be clear about the objectives of this important initiative undertaken by the NHRC. He added that there must be a two pronged approach to study the gaps between India's international human rights commitments and domestic legislations. First, it will be important to analyze the text of the core human rights treaties vis-à-vis India's domestic laws and secondly, to assess these conventions in the light of General Comments and Concluding observations made by Treaty Bodies in response to India's written submissions to these bodies. It is through such a comprehensive study that the gaps could be identified and subsequently plugged. He also suggested that adoption of a quality-oriented approach, whereby the research which has already been done on the subject, must be used and built upon to study and address the issue. He also suggested for consideration of the Commission, the possibility of setting up a specialized thematic sub-committees, such as, on child rights, disability, women, etc to give their comments on the gaps between the relevant international convention and prominent domestic legislations. Mr. Tyagi further suggested that we should look into the best legislations in the world and adopt the same to the maximum extent possible.

#### **CONVENTION ON RIGHTS OF PERSONS WITH DISABILITIES, 2006**

5. One of the key suggestions made by the Hon'ble Member, Mr. S.C. Sinha was that the newly enacted legislation, Mental Health Care Act, 2017 be incorporated more elaborately as this legislation has taken care of the failures of Mental Health Act 1987.

Mr. S.C. Sinha highlighted that the National Policy of Persons with Disabilities, 2006 was supplementing the old Act, which has now become redundant with the coming of the new Act as it is presumed that the new Act, has incorporated all significant portions of the old Act and the policy as well.

6. Justice Pinaki Chandra Ghose , member NHRC observed that the issue of Disability Certificate has been taken care of by the National Legal Services Authority and State Legal Services Authorities under the Legal Services Authority Act, 1987.
7. The issue of overlapping of the two statutes, namely- National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Mental Disabilities Act, 1999 and The Right of Persons with Disability Act, 2016 on the concept of Guardianship was discussed and debated. It was agreed by all that Guardianship should be regulated in some form so that rights of these persons are not infringed.
8. The ambiguity of Section 3(3) of Right of Persons with Disabilities Act, 2016 was discussed over which Mr. S.C. Sinha suggested reading of the Saving Clause of Section 16 of Right of the same Act and provisions of CARA.
9. The issue of Reservation was also pondered upon by the Committee. Mr. S.C. Sinha highlighted that the issue of reservation needs to be dealt with as even a person who is 'hard of hearing' has been labelled as a 'disabled person' now. To this, Mr. Narinder Singh suggested that there should be a difference between medical condition and physical condition for appropriate provisions of reservation. He also suggested that some disabled persons should be allowed to be treated as normal persons.
10. Secretary General Mr. Ambuj Sharma suggested that it is required that the government provides a holistic scheme that takes care of the employment of the Disabled. He



suggested that bank loans be given at Preferential Rates and schemes such as MUDRA schemes be introduced so that the disabled can also get engaged in micro enterprises in small business activities.

He also suggested that all implementation suggestions can be taken in one basket and the Government can provide a condition in every scheme/ project to enable specific provisions for taking care of the disabled under the said scheme such as whether it is housing, infrastructure, access to public services, concessions in finance, taxation etc. Member Mr. S.C. Sinha added here that the Act prescribes this measure but no follow up is there.

**Key recommendations emanating from the first Meeting of the Convention on Child Rights and Convention on Rights of Persons with Disabilities, held on 16 November, 2017 are:**

**11. COMPOSITION OF SUB-COMMITTEES:**

The following composition of Sub-Committees was proposed:

- **Convention on Child Rights-** Under the guidance of Mr. Sudhir Kumar along with 2 Research Associates-Mujtaba Hussain and Jeetmanyu Sahoo
- **Convention on Persons with Disabilities-** Under the aegis of Mr. Sudhir Kumar along with 2 Research Associates- Kannika Singh and Sneha Yadav
- **Convention Against Torture-** under Mr. Narinder Singh and Mrs. K C Soumya (MEA) along with 2 Research Associates- Nishtha Gupta and Himani Kaushik

**12. LAYOUT/ FORMAT OF THE REPORT:**

Comparative approach of study was recommended by Member Mr. S.C. Sinha so as to identify the gaps between international and domestic laws and then suggest a course of action to fill these gaps. He suggested that the analytical report may be given on the following four aspects, in a tabular format:

**Column I-** International Conventions/Treaties, General Commentaries and Concluding Observations

**Column II-** Domestic Laws of India along with Reports of various Ministries and Civil Societies

**Column III-** Gaps between the International Conventions and Domestic Laws

**Column IV-** Proposed Course of Action to bridge the gaps so identified (eg. New law/ Act needed, Amendment in existing law/Act, executive instructions etc.)

### 13. NOMINATION OF MEMBERS:

It is also proposed that the Hon'ble Members of the National Human Rights Commission may be nominated by the Hon'ble Chairperson to oversee the above stated sub-committees as follows:

- Convention on Child Rights- Smt. Jyotika Kalra
- Convention on Persons with Disability- Shri S.C. Sinha
- Convention Against Torture- Justice Shri D Murugesan

### 14. TIMELINE OF THE PRESENTATIONS TO COMMISSION:

It was decided that the sub-committees will give their write-up and power point presentations of final report to the Hon'ble Chairperson tentatively in the fourth week of January. The presentation (refer Para 12.also) will focus on the following issues:

- a. Changes/ Amendments made in the prevailing law with specific Sections and Articles
- b. Any new legislation required
- c. Any specific sections pertaining to the Article for implementation
- d. Clear cut rationale / basis for each suggestion should also be given.

15. AREAS OF CONCERN:

- a) Analyse the text of the core human rights treaties vis-a vis India's domestic laws and assess these conventions in the light of the **General Comments and Concluding Observations made by the Treaty Bodies** in response to India's written submissions to these bodies. It was also suggested to study the various Committee Reports of United Nations for a more comprehensive research.
- b) Study the country's own case law and pertinent judicial intervention and judgments in the matters concerning human rights, in the overall context of judicial system to understand India's judicial system to understand how **India's judicial pronouncements** have set human rights standards which may be far more progressive and advanced than even the standards provided under International Human Rights Treaties.
- c) It was suggested that the **best legislations of different countries be also examined** and they may be adopted/adapted as per our suitability and requirement. It was also suggested that since international laws are dynamic, it is needed that

recommendations are given keeping in mind the ever changing nature of international laws.

## 16. INTERACTIONS

- a) **Civil Society:** Supplement the research with the work which already has been done by the different core committees, NGO's, Human Rights Activists, Persons working in the field of the particular field etc. and collect as much material as possible.
- b) **Ministry of External Affairs:** It was proposed that the Research Scholars work in liaison with Ministry of External Affairs, with the assistance of Under Secretary Coordination to obtain present status of gaps pertaining to international conventions and treaties.
- c) The final recommendations / report should also be got vetted/run through a key (JS/Director) officers in the Nodal Ministry dealing with the subject so as to ensure all latest government initiatives regarding Acts/ Rules/ Schemes/ Court Directives etc have been duly taken into account.

## LIST OF PARTICIPANTS

### NHRC, India

1. Justice Shri H L Dattu, Chairperson [Chair]
2. Justice Shri D Murugesan, Member
3. Shri S.C. Sinha, Member
4. Smt Jyotika Kalra, Member
5. Justice Pinaki Chandra Ghose, Member
6. Shri Ambuj Sharma, Secretary General
7. Dr Shri Ranjit Singh, JS (P&A)
8. Shri B S Nagar, US (Coordination)
9. Junior Legal Research Consultants

### Members of the Committee

1. Shri Narinder Singh
2. Smt Neeru Chadha
3. Shri Shyam Agarwal
4. Shri Sudhir Kumar
5. Shri Vinaysheel Oberoi
6. Dr Yogesh Tyagi