

## NATIONAL COMMISSION FOR WOMEN AND PROTECTION OF HUMAN RIGHTS OF WOMEN IN INDIA

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### ***Abstract***

*The National Commission for Women investigates and examines the legal safeguards provided for women under the Constitution and other laws and recommends to Government measures for their effective implementation. The Commission's mandate can be divided under five heads; To safeguard of rights of women granted by the constitution and laws, To study problems faced by women in the current day and make recommendations to Eradicate these problems, To evaluate the status of Indian women from time to time, To fund and fights cases related to women's rights violations, To safeguard rights of women, etc*

**Key Words:** Human Rights, National Commission for Women, Protection, Constitution, Government, Women's Rights, etc.

### **INTRODUCTION**

The NCW has a wide mandate covering almost all aspects of women's Development. The Commission investigates and examines the legal safeguards provided for women under the Constitution and other laws and recommends to Government measures for their effective implementation. The Commission is also to review the existing provisions of the Constitution and other laws affecting women and recommend amendments to meet any lacunae, inadequacies or shortcomings in such laws, look into complaints and take suo-motto notice of matters relating to deprivation of women's rights, etc. and take up the issues with appropriate authorities; take up studies and research on issues of relevance to women, participate and advice in the planning process.

For socio-economic development of women, evaluate the progress made thereof; inspect Jails, remand homes etc., where women are kept under custody and seek remedial action. Wherever Necessary in keeping with its mandate, the Commission initiates various steps to improve the status of women and works for their economic empowerment. The Commission's Chairperson, Members and Officers visit various parts of the country to attend

meetings, seminars, workshops and public hearings organized by it and in collaboration with other organizations. Besides, visits are made to custodial institutions such as jails, remand home etc. Members and officials also attend legal awareness camps on legal rights of women organized in collaboration with NGOs and other organizations.

Visits are made to gain first-hand knowledge about the problems faced by the women in various parts of the country in order to suggest remedial measures and to take up the issues with the concerned authorities. The Commission also constitutes expert committees to study various relevant Issues such as “Violence against women of Minority Communities in India” and “The Prevention and Protection of Women from Public Dehumanization and Stigmatization Atrocities Bill, 2014”. The Commission receives a large number of complaints and also takes suo-motuo cognizance in several cases to provide speedy justice. It sponsors Gender Awareness Programmes, Parivarik Mahila Lok Adalats etc. and organizes Seminars, Workshops and Consultations. Publicity is also made through advertisements in print media and television channels, street plays etc. to propagate messages so as to create awareness against female foeticide, violence against women, child marriages, Anti-dowry and other women related issues.

### **The Mandate of the Commission**

Section 10(1) of the Act of 1990 provides a fourteen-point mandate for the National Commission for Women. The Commission’s mandate can be divided under four heads

- (a) To safeguard of rights of women granted by the constitution and laws.
- (b) To study problems faced by women in the current day and make recommendations to Eradicate these problems.
- (c) To evaluate the status of Indian women from time to time And
- (d) To fund and fights cases related to women’s rights violations.
- (e) To safeguard rights of women.

These are enshrined in sub clauses (a) of Section 10 (1) of the Act. They Expect the Commission to examine the safeguards for women provided by the law and The Constitution. The Commission is to submit reports about these safeguards and make recommendations about the implementation of the same. The Commission is also expected to review these safeguards periodically to identify and remedy any lacunae and inadequacies. The Commission is also empowered to take up cases involving the Violation of the cases.

(b) To Study of problems faced by women:

These are mainly enshrined in sub clauses (g)-(1) of Section 10 (1) of the Act. According to these sub clauses, the Commission is to carry out studies involving the problems arising out of discrimination against women and provide remedies for these problems. As per this part of the mandate, the Commission is also expected to advice the government about the socio-economic development of women based on these Studies.

(c) To evaluate the status of the Indian women:

The Commission, according to the guidelines, has the responsibilities of the evaluating the status of Indian women under the Union Government and State Governments. It is to inspect and evaluate the conditions of detention homes and other such facilities in which women may be detained and deal with the appropriate authorities in order to improve the condition of such places. These evaluations are to be submitted to both the Central and State Government through periodic reports and recommendations.

(d) To fund and fight cases related to women's rights violation:

Certain clauses in the mandate also empower the Commission to take up cases related to discrimination against women, women's right violation and fund cases which involve the rights of a large number of women. Sub clause (f) of Section 3 of the Act of 1990 empowers the Commission to take suo-motto notice of matters relating to women's Right deprivation, non-implementation of laws enacted to protect women and non-Compliance of policies and guidelines for mitigating hardships of women, in such matters the Commission is empowered to approach the appropriate authorities and seek remedies.

### **Protection Officer**

There is a need for appointing full time POs. Contractual appointments could be considered as is being done so in Delhi and Haryana support system consisting of exclusive POs with adequate staffing should be set up for the implementation of the PWDV Act, so as to be able to achieve the ends of justice expeditiously. NGOs could be considered as POs and paid honorarium for the task being performed by them subject to basic minimum facilities such as office, transport, staff, etc.

The adequate numbers of POs should be such that they are able to reach to the Taluk/Block level the feasibility of every Panchayat having a Women Justice Committee could

also be considered. The DIR Index model adopted by the A.P. Police should be circulated in all states with directions that the model be adopted. The Protection Officer should be in charge of maintaining the DIR index along with process service register to record the serving of Summons, etc. by the PO. Role definition and clarity-between the police/WCD/PO/SP14.

### **Service Providers**

- ❖ Notification of Service Providers as per rule 11 of the Act is required. Registration of service providers after due verification of their suitability must be done and their phone numbers and addresses must be published and made available.
- ❖ Under section 10, a service provider registered under the Act has the power to record DIR and forward a copy thereof to the Magistrate.
- ❖ The provision is restrictive and prima facie curtails the NGOs and other organizations who have not registered themselves under the Act or whose registration may not have been done by the concerned authorities, from assisting the women. The services have to be accessible to women in remote areas.
- ❖ Map facilities of Government and Government aided services across different geographical regions.
- ❖ Provision for honorarium to counsellors.
- ❖ Accountability of service providers-who fail to register and fail to provide services to the aggrieved person.

### **Shelter homes and medical facilities**

Need to notify the facilities available at state, district and block levels

### **Training, Orientation and Dissemination:**

- ❖ Training and orientation of all Stake Holders involved in Implementation of PWDVA and also training manual for POs, SPs, Police and Judiciary must be developed separately.
- ❖ Orientation and awareness to other key factors such as the Gram Panchayats and the Social Justice Committees, SHG groups and Federations, Anganwadi workers etc. in supporting victims of violence.
- ❖ Awareness on the law, through media campaigns in print, electronic media and other means.

- ❖ Translation of act in all regional languages so that it can be easily disseminated and understood.

### **Towards single window clearance/Role clarity**

Dowry Prohibition Act, Section 498A, Domestic Violence Act overlap to some extent in sense that they cover various facets of marital disharmony and violence. State governments have reacted differently to the implementation of these Acts-some places there are police /social welfare department officers etc., given additional charge to work as dowry prohibition officers /protection officers. Police in many states now resort to counselling and settlement and do not immediately take action under section 498A.

Even on complaints under section 498A IPC the trend is to resort to counselling and rapprochement rather than filing FIRs and charges and arresting the persons on grounds because the provision is cognizable and non-bailable. This may also ensure role clarity between the police and POs as well as ensure proper coordination between agencies. Commission strongly feels that counselling should not be carried out by the Police, but the police should engage services of a professional counsellor or any Authority under DV Act and take suitable action thereafter.

The following are the amendments proposed by the Legal Cell to the (PWDV) Protection of Women against Domestic Violence Act, 2005.

1. Who can write and make DIR's to Magistrate?

U/s 9(b) it's the POs duty to make the Domestic incident report to the Magistrate, u/s 10 Service providers can record the DIR and forward to Magistrate. Even under the rules (Rule 5) it's Only the POs and SPs authorized to make the DIR.

These provisions are very restrictive and take away the role of the women Commissions as well as those associations who are actively engaged in resolving disputes. It's true that such organizations can file applications u/s 12 of the Act. But the provision to section 12, takes away any such role being performed by such Organizations, as it's made dependent upon the DIR received from PO/SP. Even the Police report would be dependent on DIR filed or to be filed by PO/SP. Hence this restrictive provision needs to be amended, authorizing any Statutory Body Espousing the cause of women or promoting and protecting human rights or the Police or any NGO to make such report which shall be treated as DIR under the PWDV Act.

(ii) Definition of “shared household”, the judgment of the Supreme Court in the Matter of S.R. Batra vs. Taruna Batra needs to be reviewed:

The court in the judgment excludes the self-acquired property of the in-laws from the purview of “shared household”. In doing so, the court contradicts the express letter of the law, which in Section 2(s) clearly provides that: “shared household” means a household where the person aggrieved lives or at any stage had lived in a domestic relationship irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household. Hence, the PWDVA expressly states that the ownership of the shared household is irrelevant to the question of the right to reside in the shared household [Section 17 (1)].

The court states that the relief sought cannot be granted because the premises in question is not joint family property, and hence, cannot be “shared household”. This too is contradictory to the express provision of Section 17(1) such an interpretation is sure to have adverse implications on applications filed by women in cases of NRI marriages, where the husband brings the bride to his parents’ house, lives there for a month and then goes abroad. The wife continues to reside in this house, which quite probably is the self-acquired property of the in-laws. The Batra judgment interpretation would then automatically require the courts to say that, since this cannot be considered to be the "shared household", the wife has no right to live there regardless of whether he makes provision for her visa or accommodation in the new Home.

Whether this defeats the very purpose of the Act-protecting women, is but a foregone conclusion in cases such as these the definition of “shared household” under Section 2(s) requires some changes. In order to ensure that the interest and legitimate rights of a woman in a domestic relationship and facing violence can be upheld, while at the same time, given the concerns raised by the apex court in the Batra judgment. Therefore, the following amendment to the definition is suggested to meet requirements of ensuring protection to married women who reside in households not owned by their husband but by her parents-in-law, but which nonetheless her matrimonial home.

However, at the same time, in view of the concern raised by the court, it is also expressly clarified in the new definition that only that household belonging to the parents-in-law will be “shared household” for the purposes of this Act which has been her matrimonial home.

### **Revised scheme for the Relief and Rehabilitation to the victims of Acid Attack**

The Commission had earlier drafted a Bill titled “Prevention of Offences (By Acids) 2008”. Subsequently it was suggested to have a scheme on the lines of relief and rehabilitation to victims of rape and accordingly the Commission has formulated a Scheme for relief and rehabilitation of offences (by Acids) on women and girl child which is on the lines of the scheme relating to rape victims. Main features of the Scheme for relief and rehabilitation of victims of rape are:

- ❖ The authorities at District and State level shall be the same as suggested for the amount up to Rs 5, 00,000/-to be immediately provided towards treatment, and further up to the maximum of Rs30 Lakhs. Rs 5 Lakhs earmarked towards rehabilitation of the victims.

### **Finalization of Amendments to Dowry Prohibition Act.**

National Commission for Women had organized a Consultation in September 2008 and based on the recommendation prepared with inputs provided by delegates and Lawyers Collective, the proposed amendments to Dowry Prohibition Act 1961 were finalized. The revised recommendations have been sent to the Ministry for Consideration.

### **Revised Bill on Protection to Women from Sexual Harassment at Work Place Bill, 2008.**

The draft bill is to provide prevention and redressal of sexual harassment of Woman at workplace. The definition of 'aggrieved woman' besides any woman Employee would include any woman associated with the workplace including students, Research scholars in any educational institution, university etc. It applies to all Workplaces in Government as well as private sector, organized and unorganized sectors.

The salient features of the draft bill includes:

- ❖ Constitution of the Internal Complaint Committee (ICC).
- ❖ Appointment of District Officer.
- ❖ Constitution of Local Complaints Committee by the District Officer.
- ❖ Separate provisions for organized and unorganized sector.
- ❖ Penalty for publication or making known contents of complaint and enquiry proceedings.
- ❖ The revised Bill has been sent to the Ministry for consideration.

### **Amendments to Indecent Representation of Women (Prohibition) Act, 1986**

The National Commission for Women after consultation with NGO's and Advocates working in the field have prepared the recommendation on Amendments to Indecent Representation of Women (Prohibition) Act, 1986. The recommendations have been sent to the Ministry of Women and Child Development.

### **Tenancy Rights of Deserted/Divorced Women: Amendment in the Rent Act of States.**

A memorandum dated 09.06.2009, addressed to the Chairperson, for and on behalf of an NGO, PRAGATHI was sent to the Commission. The issue was primarily upon the tenancy rights of deserted/divorced wives whose husband had entered into the Tenancy. Vide the said memo; intervention of the Commission has been sought for in light of the judgment of the Supreme Court of India, in the case of B.P Achala Anand Vs. S. Appu Reddy (ILR 2005 Kar 1721). Vide the said judgment, the court had Exercised its power vested under Article 142 of the Constitution and had stated about the need for the tenancy rights of deserted and divorced women and had opined that all the States of India should amend the "Rent Act" to that effect. The Karnataka legislature has tabled an amendment bill before the Legislative Assembly, for affecting necessary amendments in the Rent Act, in accordance with the Supreme Court judgment. The said amendment proposes to incorporate the following changes within its ambit.

The amendment appears to be in conformity with the said judgment. In the Karnataka Rent (Amendment) Bill, 2008, amendment of Section 3, in clause (n), after item (ii), the Following to be inserted, namely:

- ❖ A deserted wife of a tenant who has been or is entitled to be in occupation of the matrimonial home or tenanted premises of husband; and
- ❖ A divorced wife of a tenant who has a decree of divorce in which the right of residence in the matrimonial home or tenanted premises has been incorporated as one of the conditions of the decree of divorce.

As of now, the Rent Acts of various States, though are dealing with the tenancy. Rights of widow, is silent upon that of the deserted or divorced wives who equally need the same protection. The directions as issued by the Supreme Court by invoking the Provisions of Article 142 are binding upon the States so as to do "complete justice". This, however, being within the legislative powers of the State may be taken up with the State Government, so that necessary amendment in the "Rent Control Act" may be brought into, if deemed fit. Accordingly, the Commission has written to the Chief Ministers of all the States to introduce an amendment to



the Rent Acts dealing with the Tenancy rights which will be a step toward empowering deserted/divorced women.

## **REFERENCES**

Rashtra Mahila, Vol.1, No. 120, October, 2008.

NCW Annual Report 2008-09.

NCW Manual, 2015.

New Act, 1990.

Ministry of HRD Notification, 1992.

Acharya, B.C, "A Hand book of Women's Human Rights", Bombay, C.N. Publishers, 2014.

Agosin, Marjorie (Ed.), "Women, Gender, and Human Rights: A Global Perspective", Mumbai, Rawat Publications, 2015.

Brownies, Ian. (Ed.), "Basic Documents in Human Rights", Oxford, Clarendon Press, 1981.

Banerjee, P.C., "Human Rights under Constitution and other laws", Pune, Kalyani Publications, 2000.

Bhatt, Savita, "Women and Human Rights", New Delhi, Attar Publishing House, 2011.