



GENDER SENSITIZATION THROUGH NATIONAL HUMAN RIGHTS COMMISSION: AN EVALUATIVE STUDY

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Women in India, since times immemorial, have been victims of innumerable atrocities, justices, torture and various other types of human rights violations. These violations have ranged from abduction, battering, bride-burning, child-marriage, nude parading, prostitution and rape to forced sale, purchase and exchange for consideration. Notwithstanding occasional outbursts, repercussions and revolt, the situation has, by and large, been dismal and it continues to be the same till date. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequalities and discrimination.

Women in India as is well known have never been treated well even at home or while at work. The matter has all along been agitated inside and outside the parliament by parliamentarians, common men, by organization and society. For the welfare of the woman, several commissions had been set up by the government to look into the matter of status of woman in Indian society. In its crusade to deal with blatant violations, Indian parliament enacted the Protection of Human Rights Act, 1993. The present paper makes an attempt to study the role and responsibilities of National Human Rights Commission (hereinafter cited as NHRC) in seeking redress for the women victims. A perusal of Annual Reports, monthly Newsletters, and various other publications enables one to understand the nature and functioning of this Commission. References of landmark cases have been taken from the Annual Reports published so far. Highlighting its achievements and recommendations in many fields of law, this part shall make an attempt in bringing out the weaknesses in the working of the present system.

NATIONAL HUMAN RIGHTS COMMISSION

Section 12 of the Protection of Human Rights Act, 1993 enables the National Human Rights Commission to inquire, *suo-motu* or on a petition to it by a victim or any person on his behalf, into complaint of (i) violation of human rights or abetment thereof; or (ii) negligence in the prevention of such violation by a public servant.

Similarly, Section 13 of the 1993 Act confers power on the National Human Rights Commission to require any person, subject of course to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points of matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of Section 176 and 177 of the Indian Penal Code.

Section 17 lays down that the NHRC, while inquiring into the complaints of human rights violations to call for information or report from the Central Government or any other authority or organization subordinate thereto within such time as may be specified by it.

Under Section 18 of the Act, the NHRC may take, *inter alia*, following steps upon the completion of an inquiry held under the Act, namely: (i) where the inquiry discloses, the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons.

It is in line with the above mentioned and various other statutory provisions that the National Human Rights Commission, by way of its circular of 14 December 1993, addressed the Chief Secretaries of all States and Union Territories thereby making it obligatory on them to direct the District Magistrates and Superintendents of Police of every district to report to the National Human Rights Commission about the incidents of custodial deaths and rapes within 24 hours of occurrence.¹

As mentioned earlier, the annual reports of the Commission serve as essential sources of information on the human rights violations and situation in the country. Some of the illustrative cases relating to human rights violation of women have been analysed in the present part. The analyses of these cases clearly shows that whenever the NHRC has been informed about the human rights violations, it has taken cognizance of such violations and has set the law into motion.

Important Interventions by NHRC

The first annual report of the Commission, dealing with the period of establishment of the Commission in October, 1993 to 31 March, 1994 was submitted to the Central Government on 3 June, 1994. During this period *Justice Ranganath Misra*, retired Chief Justice of the

¹ Circular No. 66/SG/NHRC/93 Dated 14 September 1993.

Supreme Court was the Chairperson of the Commission. During his three-year term as the first Chairperson, he gave the Commission a nice, swanky office and some public profile. But the work of the Commission during these years was rightly criticized for being tentative and weak.² It was only with advent of *Justice Venkatachaliah* Chairperson that the Commission took stock of its predicament, reorganized its internal working, took a less hesitant attitude to human rights violations and strove for more resources and right to independent investigation. During the period, pursuant to its circular of 14 December 1993 addressed to the Chief Secretaries of all States and Union Territories making it obligatory on them to direct the District Magistrates and Superintendents of Police of every district to report to the National Human Rights Commission about the incidents of custodial deaths and rapes within 24 hours of occurrence, in July 1994, the NHRC received a report from the Deputy Commissioner of Police, South District, New Delhi, in regard to a custodial rape by an Assistant Sub-Inspector (ASI) of Delhi Police Force. According to the report, the victim had been brought to the police station by another ASI, as she got lost of her parent's house. No report was made in the daily diary of the police station of the victim having been taken to the police station, nor was due care taken to ensure the return of the victim to her family. The ASI who took her to the police station was accordingly placed under suspension. The victim was raped by another ASI who took her to his house in the residential quarters of *Paharganj* Police Station. The ASI who committed the rape was arrested and the case was sent to court for trial. The Commission also receives a complaint and a report on this incident from a Non-Governmental Organization- Peoples Union for Democratic Rights (PUDR), Delhi.³ On perusal of the report from the Government of NCTD, and also the report of the PUDR, the NHRC directed the Government to explain as to why the woman was detained at the police station for the night, how it was that there was no supporting entry for her detention at the police station, and what steps had been taken or were proposed to be taken to ensure that women were not called to and detained at the police station for investigation, particularly at night. The NHRC took serious note to the persistence of such practices, notwithstanding the decision of the Supreme Court in the case of *Nandini Satpathi v. State of Orissa*. The Government of NCTD subsequently reported that there had been a lapse on the part of the duty officers both at Police Station for not recording the victim's presence at the police station and also for not informing her family members of her whereabouts. Departmental

² See, R.Dhavan, "One Step Forward: Notes on the First Report of the National Human Rights Commission" 38 JILI 362-376 (1996).

³ National Human Rights Commission Annual Report (1994-95), New Delhi: NHRC, p.44.

enquiry into the lapses was ordered against the concerned police officials and instructions not to call women for interrogation in the night, and to detail women police officers if a woman was called for interrogation to a police station at an odd hour, were reiterated by the Government of NCTD for strict compliance by all concerned officers.⁴

In the same year the NHRC took *suo-motu* action on the basis of a reported judgment by the press involving alleged rape of *Bhanwari Devi*, a 'Sathin' working in the rural areas of Rajasthan under the State Government's Women Development Programme by certain villagers for her campaign against child marriages. Later, the District and Sessions Judge, *Jaipur*, whose court heard this case, acquitted the persons accused of rape. The NHRC called for a report from the Government of Rajasthan.⁵ The Additional Solicitor General of India informed the Commission that a women's organization 'Vishaka' had filed a writ petition in the Supreme Court in the nature of a public interest litigation, *inter alia*, praying that the State of Rajasthan be directed to ensure that free and fair investigation or enquiry was conducted in respect of *Bhanwari Devi's* case and that suitable guidelines be framed to deal with sensitive issues like the present one, where working women, and more particularly women engaged in the work of social upliftment and advancement, could freely carry out their duties without fear of sexual harassment or abuse.⁶ The Commission received a letter from the National Commission for Women (NCW) indicating that it had taken up this case with the State Government as also the Government of India, and that their intervention had resulted in the sanction by the Prime Minister of a token amount of ten thousand rupees as relief to the victim and also entrusting of the investigation to the Central Bureau of Investigation. The NCW also informed the NHRC that it had provided financial support to the women's organization which took up the litigation on behalf of the victim. Having pursued the relevant judgement of the District and Sessions Judge, *Jaipur* and having noted the efforts of others, the Commission recommended to the Rajasthan Government against acquittal of the accused in the case. The NHRC was of the view that the acquittal was wrong and was against the facts and the settled position of law. This recommendation was contained in a letter addressed by the Chairperson of the NHRC to the Chief Minister of Rajasthan. The Government of Rajasthan indicated that an appeal had been filed before the High Court.⁷

⁴ National Human Rights Commission Annual Report (1994-95), pp.44-45.

⁵ Ibid.

⁶ Ibid., pp.54-55.

⁷ Ibid., p.55.

During the year 1997-1998 the number of complaints registered with the Commission recorded an increase of nearly 80 percent. As against 20,514 complaints received during 1996-1997, the Commission received 36,791 complaints. As in past, U.P. continued to account for the largest number of fresh cases. This period devoted its attention to various subjects including Custodial Deaths, Rape and Torture, Video Filming of Post-mortem Examination and Revisions of Autopsy Forms, visits of Police Lock-ups.

“SAKSHI” a Delhi based NGO, submitted a communication to the NHRC in April 1997 alleging the exploitation of the school girls by a teacher in a Government Secondary School in *Chittorgarh* District, Rajasthan.⁸ It was alleged that the teacher had raped nine minor girls between the ages of fourteen to sixteen years. The accused committed the crime in secrecy and none of the girls lodged any complaint against him. Three girls became pregnant and two of them had undergone abortion. The third girl tried to hide her pregnancy, but when her parents came to know of it, the father of the girl went to the police station and filed an FIR. When the accused came to know about lodging of the FIR, he absconded. “SAKSHI” requested the Commission to undertake a detailed investigation to ensure that the accused was arrested and action taken in accordance with law. The NGO also offered its assistance in investigation by the Commission. The Commission took cognizance and issued notice to the Chief-Secretary and Director General of Police, Rajasthan. In addition, it also directed its Investigation Division to collect the facts. The report submitted on behalf of the Government of Rajasthan revealed that a case had been registered against the accused for the offence of rape under Section 376 of IPC and he was arrested on 22 May 1997. The Investigation team of the Commission also conducted a thorough investigation in the matter and submitted its report to the Commission. Taking note of all these facts and circumstances, the Commission recommended that the prosecution of the accused be pursued diligently and expeditiously and that an interim compensation of Rs. 1 lakh be paid to the victim who had made the complaint to the police. The Commission further recorded its appreciation of the work done by the office bearers of the NGO, “SAKSHI”, “*Prayas*” and *Karni Nagar Vikas Samiti Home*, and also the work by Shri Sanjay Malhotra, Collector and *Shri Shrinivas Rao* and *Janga*, Superintendent of Police, for their timely and effective intervention in assistance the victim and booking the culprit.⁹

⁸ National Human Rights Commission Annual Report (1997-98), New Delhi: NHRC, p. 72.

⁹ Id.

Another case that drawn the attention of NHRC was a news item published in the Pioneer newspaper on 30 April 1997. According to the news item, a policeman attempted to rape a woman labourer. When her husband tried to rescue her, severe injuries were inflicted on him by the policeman and two of his colleagues.

The Commission directed the Director General of Police, *Andhra Pradesh* to submit a report on the incident.¹⁰ The report disclosed that the woman labourer was caught hold of by the police constable and was threatened by him with a gun. On hearing her scream, her husband intervened to rescue her. At this, the accused called three of his colleagues who were on duty with him. The accused and two other policemen administered a beating to the husband. The woman got an FIR registered against the policemen under Section 354 IPC (outraging the modesty of a woman) and Section 324 IPC (voluntary causing hurt by dangerous weapons or means). All the three policemen were arrested and suspended from service. Later, they were released on bail and the accused was removed from service as per Rule 25(1) of APCS Classification, Control Appeal Rules, 1991. The Commission remarked that it was a matter of deep regret that the personnel of law enforcing agencies, whose duty was to protect the rights of the citizens, themselves, became perpetrators of such heinous acts. Considering the indignity and humiliation suffered by the woman and injuries received by her husband, the Commission recommended to the government of *Andhra Pradesh* to pay interim relief of rupees five thousand to the victim within one month from the receipt of the proceedings.¹¹

Creating Human Rights awareness is considered important and useful for better protection and promotion of Human Rights. With this in view, the Commission organized/supported several workshops, training programmes and seminars inviting academicians, activists, NGOs, civil servants, etc. on Human Rights issues. In the year 2005-2006, twenty-five training programmes were conducted addressing problems of human rights and prevention of atrocities against the weaker sections, legal literacy for the women, education, mental health, combating trafficking in women and children, and many more.

India has been facing tough challenges in the task of protection of human rights of the citizens of the country, tackling issues amongst others, such as terrorism, trafficking in women and children, disappearance of persons, displacement of persons due to disasters, conflicts, child labour, education, health, custodial deaths, prisons and disabled. The

¹⁰ Ibid., p.84.

¹¹ Id.

Commission has tackled these issues by not only dealing with the individual cases but also issuing policy guidelines for implementing agencies.

The Commission received only 496 complaints of violation of human rights in 1993-94, the first year of its establishment. Their number steadily increased over the years with the Commission receiving 82,233 complaints during the year 2006-2007. The Commission off 93,421 complaints during 2006-2007 which included complaints carried forward from earlier years. In seventy cases, the Commission recommended immediate interim relief of rupees 32,507,500.

In matters relating to Human Rights, the Commission firmly believes in the value of collective efforts, co-ordination with other agencies and convergence of efforts and resources. Trafficking in women and children remained on top concern of the Commission in the year 2006-07. The Commission with other agencies like Ministry of Home Affairs, Ministry of Women and Child Development, National Commission for Women and the UNICEF, took a collective decision in September 2006 to work in unison and draw up an Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women. This collective effort would help in eradicating the problem of trafficking from its very roots.

The National Human Rights Commission drafted the guidelines for speedy disposal of child rape cases. It recommended that complaint relating to child rape can be made by the victim or eyewitness or anyone, including a representative of non-governmental organization and should be recorded promptly and accurately. It suggested the following:

- a) The case should be taken by an officer not below the rank of SI and preferably lady police officer.
- b) Recording should be verbatim.
- c) Person recording to be in civil dress.
- d) Recording should not be insisted in police station, it can be at the residence of the victim.
- e) If feasible assistance of psychiatrist should be taken to make victim comfortable.
- f) The Investigation Officer shall ensure that medical examination of victim of sexual assault should preferably done within 24 hours.
- g) The Investigation Officer shall secure the clothes of the victim as well as of the accused and send them for forensic analysis to find out whether there are traces of semen and also matching the blood group and if possible DNA profiling.

- h) Identity of the victim and the family shall be kept secret and they must be ensured protection.
- i) Trial should be held in-camera and preferably presided over by a lady judge.
- j) To avoid the proximity of the accused with the victim, recordings can be done through video conferencing.
- k) Magistrate should commit case to session within 15 days after filing of the charge-sheet.

In 2006-07, the NHRC concentrated its efforts on other areas like; Countering terrorism and insurgency; Improvements in juvenile justice system by organizing the two-day National Conference on Juvenile Justice System in India at New Delhi on 3 and 4 February 2007; Rights of the disabled; Rights of the Elderly by organizing “Health Awareness Week” in collaboration with Help Age India from 26 February to 2 March 2007 at *Ahmedabad*.

The year 2007 saw violence against *Dalit* women on a large scale. *Dalit* women continued to be victims of killing and sexual violence. Asian Centre for Human Rights(ACHR)sought information from NHRC through Right to Information and recorded a number of crimes against dalits.

On 14 July 2007, two *Dalits* girls were reportedly gang raped by four persons identified as *Zahir, Nizamuddin, Ikramuddin* and *Fiamuddin* at *Upeda* village under *Babugarh* police area in *Ghaziabad* district.

On 20 December 2007, a fifty-five year old *Dalit* died while trying to save his two daughters-in-law from being raped by upper caste men in *Unnao* district. Similarly, on 27 December 2007, a *Dalit* youth was killed while trying to save his wife from being raped by two upper caste youths at *Purwa* in *Unnao* district.

Often the police connive with the upper castes in committing the crimes. In March 2007, fifteen year old *Dalit* girl of *Nirpura* village was gang raped and killed by some persons who had reportedly came along with some police in a police jeep. The police including a Sub-Inspector allegedly watched the incident mutely.¹²

Conclusion

From the above analysis it is quite evident that the Commission’s purview covers the entire range of civil and political, as well as economic, social and cultural rights. Rights of the women subjected to violence, sexual harassment and discrimination have been the focus of the Commission’s action on numerous occasions. All the National Human Rights

¹² Id.at p.6.

Institutions have statutory limitations. The National Human Rights Commission of India is no exception. Among the statutory limitations, the following are the major issues of concern:

1. The composition of National Human Rights Commission does not reflect the plurality. Although Chairman of the National Commission for Scheduled Tribes, National Commission for Scheduled Castes, National Commission for Women and National Commission for Minorities are included as statutory members, these members are busy with their own commissions that their representation cannot be made effectively.
2. Since the Commission has the power to only “recommend to the concerned government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons” and no power to enforce the same. This renders it as a “paper tiger” for the States violating the rights.
3. It is an admitted fact that atrocities against women are largely committed by the members of the armed forces where there is an political unrest in the country. Yet, under Section 19 of the Human Rights Protection Act, NHRC does not have jurisdiction over the armed forces of the government of India who are responsible for the gross violations in armed conflict situations.
4. The need to provide prior intimation to the authorities for visiting jail or any other institution under the control of the State government, where persons are detained or lodged for the purposes of treatment, reformation or protection to study the living conditions of the inmates defeats the purpose of prison reforms.
5. Asian Centre for Human Rights has brought forward the issue of non-registration of complaints by NHRC. As NHRC does not register the complaints, Asian Centre for Human Rights has been delivering the complaints by hand on which NHRC puts the “receipt stamp”.

Although there prevails lot of shortcomings in the working of the Commission, one cannot undermine the role it has played in protection and improvement of the rights and restoring the public faith in justice.

The researcher humbly submits the following suggestions which can certainly improve the efficiency of the Commission:

Firstly, there should be an increase in the budgetary provisions allotted to the Commission and power to intervene in areas where armed forces are employed.

Secondly, The Commission should have its own independent investigation wing so as to lessen the dependency on State police machinery and thereby avoiding any political interference.

Thirdly, there is a need for the Commission to work in co-ordination with the State Human Rights Commissions and facilitate the process of their capacity building.

The fact that in spite of all said and done the NHRC is making an earnest effort to live up to its mandate. It is an institution which can be looked upon by all Indian citizens to seek justice. Undoubtedly, NHRC has played and continues to play an effective role in promotion and improvement of human rights.