

THE NATIONAL COMMISSION FOR WOMEN: ASSESSING PERFORMANCE

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Although a lot of scholarly attention has gone into issues concerning women for more than three decades, little work has been done on the evolution and functioning of institutions¹ that have been created since the mid-1970s to specifically look into the interests of women as discriminated, marginalized and oppressed sections of society. While the Indian State experimented with a variety of forms and modes of organizations and structures on questions relating to women's equality or women's status within the broad framework of the welfare state even before the 1970s, the emergence and/or change, modifications, and renewal in these structures and formations from time to time have been influenced by the struggles of women and pressures from women's movements² and new and varying approaches to women issues, both at the national and international levels. These new mechanisms were intended to create spaces to influence policies and processes for bringing required changes, both at the ideological and structural levels, to achieve the objectives of gender equality and justice.

The early set of institutions that were assigned the task of looking after the interests and needs of women drew primarily on the state welfare approach. In the case of Scheduled Castes and Scheduled Tribes, the issue of social inequality was addressed by the Constitution through the policy of reservation of seats in the legislature, public employment and educational institutions and through the creation of a body to monitor all these safeguards. The need for a National Commission for Scheduled Castes and Scheduled Tribes was mandated by the Constitution in Article 338 "to investigate and monitor all matters relating to safeguards provided for the Scheduled Castes and Tribes". In the case of women, no separate institutions or policies were envisaged. Women were clubbed with children and other socially and educationally backward classes of citizens for welfare services, as if their subordination and discrimination did not have an independent basis. The Constitution had nothing to say on women's labour at home or the retention of discriminatory religious personal laws in the Constitution,

which denied any independent rights in marriage, family property and productive asset; this was a clear endorsement of the subordinate position of women in the family, economy and society. The state mainly worked within the ambit of Article 15 (the special provisions clause) and three clauses of the Directive Principles of State Policy, namely, Article 39(c) and (d) and 112.

The need for an autonomous watchdog institution, first voiced in the Report of the Committee on the Status of Women in India (hence forth referred to as CSWI) (1974), came from the realization that the issue of women's subordination is not merely at the cultural level but that state institutions, laws and development policies have contributed to reinforcing cultural norms about women's roles and status. Therefore, despite the constitutional commitment to gender equality and the state's claims for the same, there was evidence of gender gaps in virtually every sector. The report noted that the processes of development had adversely impacted women by leaving them out of "both the discourse and practice", resulting in their decreased work participation rates and share of employment, and increasing poverty and insecurity in sectors of the economy in which they earlier used to dominate (forestry, agriculture, livestock, cottage industry, sericulture, fisheries, etc.).³ The report raised issues of inadequate and biased redressal mechanisms in cases of widespread though unrecognised and invisible violence against women in both private and public spheres, and the virtual absence of women from decision-making institutions of the state. The administrative and policy-making agencies needed to reorient themselves from within by taking full account of gender inequality. Creating follow-up mechanisms and processes to be set up by the state to look into the issues raised in the report was seen as an important way to mainstream gender issues. The report recommended creating apex bodies at the national and state levels to collect information from different government agencies, evaluate existing policies, programmes and laws and recommend to Parliament or the state legislature new laws, policies and programmes. These institutions were also expected to intervene in cases of actual violations of laws.

The idea of a public institution like the National Commission as an apex body to monitor, scrutinize and influence state policies, located inside the government and yet independent of the government, places it in the dual role of a watchdog body that constantly scrutinizes and checks anti-people policies of the state and also positively helps to develop capacities within the government to address the issues of the marginalized from the rights and justice perspective. Such institutions are expected to play a pro-active role in the struggles of people, and to do that they are expected to generate capacity within the institution to perform these tasks.

Therefore, any assessment of an apex body like the National Commission for Women (NCW) requires an examination of both the state approach to women's issues in a historical perspective and the evolution of national mechanisms dealing with women's issues since independence. It also entails understanding the engagement of women's movements with the state, both by way of challenging and participating in the state institutions. In fact, in the past two decades there has been a confluence of two trends. While the women's movements and activists have increasingly come to work and exercise power within the state institutions, the state has also been attempting to foster closer ties with women's movements and is increasingly relying on them to develop policies and programmes pertaining to women. While women's movements have been able to create political constituencies within the democratic spaces available to them, the state's willingness to intervene on the behalf of women, or create mechanisms and opportunities that promote women's interests is also determined by the interests of the state and political actors in securing and maintaining power. This creates a certain tension among activists in their work with state institutions, as the following assessment of the functioning of the NCW will indicate.

The effectiveness of any public institution, and here of an institution like the NCW, has to be assessed within the wider political and institutional context of Indian democracy. While democracy in India created spaces for articulating interests and mobilizing social movements on issues affecting diverse sections of society; these have been offset by centralizing and non-inclusive tendencies at the level of governance. Studies of the government structures created to look after women's interests immediately after independence point to top-down approaches, lack of understanding of women's needs and the absence of participation by women.⁴ The pressure of a vibrant women's movement from the 1970s onwards changed the state's perspectives on women's role and participation, gave visibility to women's issues and created the new national machinery for women. The questions women's movements face are: to what extent do these new policy initiatives and national machineries effectively address the issues for which they had been created and to what extent are they able to bring in changes in the culture and practices of bureaucratic structures of the state.

Two points need to be noted here. One is the political environments within which such machineries work. The recommendation for creating a monitoring body like the NCW came at that is known to be the beginning of the decline of democratic institutions in India – a shift from the Nehruvian era. The political developments in the 1970s were part of wider changes. This period saw the

rise of various social and political movements that raised issues of governance and distributive justice, and asked for state accountability. The period was marked by authoritarian and centralising tendencies at the level of governance and the initiation of 'deinstitutionalisation'. As a result of disillusionment with political parties, the non-party formations that emerged struggled to strengthen democratic institutions with the objective of ensuring their 'independence' and 'autonomy'.⁵ There were also demands for mechanisms of redressal where they did not exist, for institutions that could scrutinize and monitor state performance in terms of achieving the goals of social equality and justice, and to develop capacity to challenge state actions when necessary.⁶ This timing is significant since it raises the question why any ruling government would want to create institutions that had the autonomy to monitor and scrutinize its performance, while at another level democratic institutions and processes were being compromised by enhancing state control and disengaging the masses from popular participation in the decision-making process. The institutions so created have been found to be facing serious constraints in fulfilling their mandate because of inadequate financial and human resources, relatively powerless locations within government structures and a general lack of understanding and commitment to gender issues by concerned actors in the government and societies at large. This raises the question of viability of women's engagement with the national mechanisms created by the state as also the viability of these national mechanisms as bodies promoting women's interests, an issue that is critically located in the design, structure and autonomy of these mechanisms.

Two, a major concern for women activists has been that the functioning of these new mechanisms lacked familiarity with the political and transformational aspects of gender ideology and were unable to view the woman's question in its political context. The patriarchal bias in the formulation and implementation of policies and programs continued. Activists continued to be troubled by issues of institutional autonomy and the need to use institutions creatively to bring in social changes and make them more accessible and participative. As the following analysis will reveal, the functioning of these institutions reflected a gap in the understanding of women's concerns between the women's movements and those occupying important positions in these institutions.

The paper will discuss three things – the differing perceptions of women's organizations and the government over the design of the NCW, the impact of the composition, power, autonomy and status of the NCW on its functioning, and the effectiveness of the functioning of the Commission through its handling of violence against women. The assessment raises certain questions. Located

at the interstices of state and civil society, what are the possibilities of using this institution in a positive way? How should activists engage with it? And, as an institution that expresses the interests of the marginalized sections of society, to what extent has it been able to draw upon the experiences and knowledge of women's movements at the local levels?

The Beginnings

Drawing primarily on the state welfare approach, the earliest set of institutional structures for women set up by the Indian State included the Central Social Welfare Board (CSWB) and State Social Welfare Advisory Boards. The Boards focused mainly on opportunities of education, health, maternity and child welfare, family planning, child care, nutrition, training in arts and crafts, etc. for women, using a perspective that treated women as secondary earners and second-order agents in the development agenda of the nation. In the Community Development Programmes launched in 1950s, women were included as an afterthought in "women's slots of nutrition, education, food production and storage and feeding of pregnant and nursing mothers"⁷ in continuance with the perception of women as primarily "home-makers and keepers of the family".⁸ The programmes created an army of women extension workers in the rural areas, but since the nature of women's involvement in agriculture and allied activities continued to be viewed myopically, women were consistently kept out of the process of modernizing agriculture. In addition, bureaucratic control through the management and authority of the block functionaries stifled any possibilities of involving the rural poor at the decision-making or implementation levels and, in the case of women, the gender divide along with caste, class and community factors further complicated matters. The Mahila Mandals (women groups) that were formed in response to the efforts of the extension workers remained mere mechanisms for one-way transmission of extension services and information from the state agencies to the groups.⁹ The period did not see many changes in laws and legal machinery on issues concerning women. At the macro level, the debate on economic development centred not so much on concerns of distributive justice and equality as on productivity. The period was also characterized by the absence of any pressure that could have been provided by women's groups or movements.

Policy debates, both at the national and international levels, during the 1970s provided the context in which the need for changed perspectives on women's roles and participation in the development process through direct policy measures emerged. Under the new slogan of 'gender mainstreaming', the role and structure

of national machinery to mainstream women issues in the policy-making and implementation process was emphasised. Within India CSWI report (1974), in addition to demanding that the state set up follow-up mechanisms and processes that incorporated women's perspectives and concerns in its policies and structures, asked for a single agency, a statutory and autonomous commission, that could coordinate and examine these measures, provide expert advice on methods of implementation, and monitor state institutions to ensure equality between women and men and full integration of women in all sections of life.

This period also saw the development of women's movements and the women studies movement that examined institutions of family, marriage, and religion at the civil society level, and tried to understand their connections with state institutions and the impact of this relationship on the situation of women. The feminist campaigns against violence against women began with consciousness-raising measures, but later moved into understanding the patriarchal basis of the criminal justice system and the attitudes of the state and its agencies, viz., the police, judiciary, and bureaucracy, towards women. In focusing on the state in terms of law, administration and government responsibility, the women's groups and organizations came together. Their efforts were directed towards reform in law and legal machinery, incorporating women's perspectives in the policy and planning process, and creating special cells, bureaus, departments or ministries in government to monitor and co-ordinate women's concerns in development.

Instead of a National Policy as recommended by the CSWI, the government responded with a National Plan for Action (NPA) for women in 1976 to serve as a guideline both at the national and state levels and the establishment of "machinery for implementation" for the new policy measures that were to be taken for women.¹⁰ This was followed by establishment of a Women's Welfare and Development Bureau (1976) in the Department of Social Welfare (Ministry of Education and Social Welfare). A standing Advisory Committee known as "The National Committee on Women" with the Prime Minister as the Chairperson, at the national level to review the Plan of Action and similar committees were constituted at the State level under the Chairmanship of the Chief Minister were constituted. The Women's Bureau was given the responsibility to collaborate and coordinate with other central government ministries, initiate policies, programmes and measures, monitor programmes for women's welfare, handle the administration of legislative enactments, follow up the recommendations of the CSWI and the Nairobi Forward Looking strategies, and work with multilateral/UN agencies in the field of women's welfare. In January 1985, for the first time 'women' were emphasized as a special component of a newly formed department, i.e., the Department of Social and

Women's Welfare. In the same year a separate Department of Women and Child Development (DWCD) was established. (The DWCD has been upgraded to the Ministry for Women and Child Development since 2005) This was followed by a number of special structures for women such as Divisions (Women's Division in NIPCCD), cells (Labour Ministry, Ministry for Science and Technology, Ministry for Rural Development, Ministry of Industrial Development, NCERT, Ministry of Agriculture), parallel women-specific agencies (such as Women's Directorates in the states in place of umbrella directorates for social welfare), and separate institutions for economic advancement of women (such as the Women's Development Corporations, Rashtriya Mahila Kosh). In addition, there have been short-term committees, boards and commissions constituted by and retaining links with the State, usually meant for specific tasks, like investigating a particular aspect of the women's question (the study of women prisoners and women in custodial situations, women workers in the unorganized, informal and self-employment sectors) or to help plan formulation and policy-making (Planning Commission Working Committees and Groups on women's employment, organizations for rural women, status of women in science and technology establishments, etc.)

The new machinery was in response to the realization that the women's question could not be 'managed' within the existing procedures of governance and new creative ways were required for dealing with it. However, the need for this creativity did not find any place in the processes that followed. Government documents still reflected the tendency to create top-down structures, with the central government or the ministries as the nodal points. The country paper that the DWCD prepared for the Beijing Conference in 1995 diagrammed the national machinery "with its institutional support" as a series of concentric circles, with the DWCD at the centre and other government agencies and non-government agencies, commissions etc. arranged in larger circles around the centre. Similarly, the DWCD report, "Platform for Action-Five Years After - An Assessment" in 2000, also visualized the machinery for women's advancement as a set of structures and systems with the Department at the centre. Another way of representing the national machinery is as a hierarchy, in which the nodal or focal point is at the highest level with other agencies arranged in descending order based on their power and strength. The nodal point is the point of reference for all questions on the theme or subject of women within the larger configuration of the government and state establishments. This approach implies a sense of power, flowing from the centre to the periphery or from top to bottom, that limits the numbers and types of structures that make up the National Machinery in accordance with their proximity

to bureaucratic power¹¹ and serves to retain government/ bureaucratic control, thereby seriously affecting their functioning.

Thus, despite these new initiatives taken by the state, institutional autonomy and independence and the ability of this new machinery to function in a collective, coordinated and cohesive manner continued to be areas of tension and an uneasy relationship existed between women's movements and the state over the issue of their performance¹² In 1988, the Report of the National Commission for Self-Employed Women and Women in the Informal Sector, which made a comprehensive study of the working conditions of women in the self-employed and informal sector in the country, pointed to the extremely vulnerable position of women labour and the repressive nature of the State in its day-to-day dealings with poor women.¹³ The findings revealed that the state machinery's patriarchal biases against women continued in their dealings with women. The findings and recommendations of this Commission were never placed before Parliament. Women activists were realizing the limitations of working within the government with little possibility of using the structures creatively. They continued to be worried about the form of participation and limits of government programmes, and how women and women's groups should engage with the state structures.¹⁴ Within women's movements, the focus continued on how institutional politics could be harnessed to expand the possibilities for women, with the belief that the presence of women within these institutions would change the settled manner of their working.

Significantly, while activists within women's movements continued to engage with the state by both challenging and participating in its processes, the demand for such a Commission in the 1990s did not come from women's movements. The proposal was put forward in the National Perspective Plan (NPP), 1988, a document prepared by the Ministry of Human Resource Development¹⁵ and seemed to be an initiative of the then ruling government that was looking for the political constituency of women in an era of coalition politics. But once the proposal was put forward by the government, women's organizations responded favorably.

The expectations from such an agency were greater and, in certain ways, different from what they would have been in the 1970s; even the challenges it faced were greater. Since the post-1970s was marked by a decline in the quality and values of governance in terms of increasing bureaucratization, centralization of political power, political corruption and criminalisation of politics, the autonomous functioning of many institutions was adversely affected.¹⁶ The post-1970s period was also marked by the changing role of the state in the context of

liberalization and globalisation processes and policies, signifying the withdrawal of the state from social sectors. Communalisation in society and politics demanded a rethinking of the very terms in which women's issues were initially raised and the modes in which they were being reconstituted. While these created new challenges for women's movements in their engagement with the state, it also signaled a more pro-active role for the NCW, an institution that was meant to represent and take forward the interests of women.

The Design and Structure of the National Commission for Women: Interface between the Government and Women's Organisations

The proposal to constitute a National Commission was received with apprehension by various sections of the women's movement about the effectiveness of such a body. Their experiences with the earlier machinery for women as well as other similar Commissions, such as the one for Scheduled Castes and Scheduled Tribes, were quoted in various meetings of the women's organizations. There were suggestions to reconsider this demand.¹⁷ The following details reveal that for the government, the creation of the Commission was the end objective and there were repeated efforts to keep the institution weak and subordinate to the DWCD. For women's organizations it was extremely important that, as an apex and monitoring body to deal with the issues of women, the Commission be an autonomous and effective institution.

The women's groups rejected the initial proposal of the NPP for a Commissioner for Women's Rights within the Department of Women and Child Development¹⁸, who they felt would merely be an officer in the Department of Women and Child Development and would remain subordinate to the department. Quoting the abysmal failure of the Commissioner for SCs and STs in checking atrocities against these sections of society, the groups expressed their apprehensions about the effectiveness of a single officer in dealing with the issues of women across the country¹⁹ and demanded a national and autonomous commission for women in accordance with the recommendations of the CSWI report.²⁰

Three major issues dominated the debates within and outside the Parliament between the government and the women's organizations on the setting up of the NCW: (i) status, (ii) composition and structure and (iii) functions and powers of the NCW. The government note on the proposed setting up of the National Commission for Women released at a meeting with the women organisations²¹ and the processes that followed indicated that there were

substantial differences of perception between the government and the women's organizations regarding the status and role of the Commission. The government wanted to create the Commission by an executive order with no attribute of autonomy. The women's organizations, in their response to this initial note by the government, said that they wanted the Commission to be created as a statutory and autonomous body with real powers to take the government to task for its acts of omissions and commissions..

As for the functions of the Commission, the women's organizations did not want the Commission to be merely a recommendatory body but wanted to make it mandatory for the government to consult and involve the Commission in the policy formulation process. They asked for time-bound submission of Annual Reports of the Commission to the government and the Action Taken Reports before each House of Parliament that explained the reasons for non-acceptance of recommendations, if any. They also demanded that for conducting investigations, the Commission should have the same status as a Commission of Inquiry under the Commission of Inquiries Act, 1952, as amended. They visualized a pro-active Commission that combined investigative, monitoring, evaluative, advisory and remedial roles. There was a consensus that the role of the Commission was not to execute the government's policy or to run projects. It was also agreed that the Commission should not convert itself into a litigating body that took up individual cases, but should use its discretion to take up cases that have implications for large sections of women. As for the composition of the proposed Commission, it was recommended that there should be a Chairperson, and 3 to 5 members representing various groups, namely, central labour/trade unions, legislative and legal bodies, women's organisations and women activists. As an autonomous body, the Commission should evolve its own procedures of functioning and the composition of its staff.

In May 1990, the government brought a hastily drafted bill to constitute a National Commission for Women before Parliament without incorporating any of the suggestions made by women's organizations. Instead, it included features that were meant to keep the Commission subordinate to the government. These related to the termination of services of any member of the Commission, including the Chairperson, without giving any reasons, fresh nominations to the Commission by the government, and the right of the central government to direct the commission's activities.

The government would have passed the Bill within a day but for pressure from the women's organizations who asked for another round of consultation.²² The women's organisations prepared a critique of the bill that mainly reiterated



the points that they had raised earlier; however, they also demanded that the Bill be recast on the model of the National Commission for Scheduled Castes and Tribes and financial assistance be given to the States to set up their own Commissions.

In view of this critique, the government redrafted the Bill, incorporating suggestions given by women's groups and deleting regressive provisions like termination of the services of members. The Bill still contained many provisions that had the possibility of an adverse impact on the autonomous and independent functioning of the Commission. These included the method of appointing the Chairperson and members of the Commission by the central government without any consultation, the absence of a time limit for the government to respond to the recommendations of the Commission and the appointment of a member secretary by the government. On the administrative side, despite the recommendations of the women's groups that the Commission should have the authority "to appoint their Secretariat including the Secretary", the Commission was not granted any authority to decide on its staff requirements and the matter was left to government, who was also to determine its budgetary support. Even the powers given to the Commission to inquire, investigate and report on various issues did not go far enough. These shortcomings were bound to have serious implications on the functioning of the Commission.

Understanding the Effectiveness of an Institution

In order to understand the effectiveness of a public institution like the NCW, there is a need to consider factors such as the institutional design, patterns of recruitment, quality of personnel, organizational culture, internal conflicts for distribution of power and allocation of resources within the institution, systems of autonomy and accountability. This means that factors beyond the formal statutory design need to be examined in an appraisal of any institution though formal structure and autonomy do enable institutions to function effectively. At the same time the manner in which the available spaces are used by those at the helm of affairs in an institution has an important bearing on the performance of the institution. And it is precisely here that individuals within institutions might matter. The following section will analyse the role of the above factors in explaining the performance of the National Commission for Women.

The Institutional Design

The case of the NCW indicates that the initial design and founding conditions have an important influence on how an institution evolves. Even in the period

between the passing of the Bill and the actual setting up of the Commission, the government made several attempts to scuttle the already-passed Bill or make political appointments to the Commission. The women's organizations had apprehended this and had asked for a method of appointments keeping in mind the autonomous character of the institution. The apprehensions of the women's organisations became real when the caretaker government in 1991²³ tried to finalise the panel for the First Commission just two weeks before the general elections were announced. Women's organisations immediately intervened to stall this move. The government also made several attempts to block the setting up of the Commission, sometimes by floating the abandoned proposal of appointing a Commissioner instead of a Commission and at others by announcing the setting up of two commissions, one to protect women's rights and the other to study women's status and problems. The women's organisations had to put up another fight to implement the already passed Act. In a memorandum to the Prime Minister outlining the difference between the Commission as envisaged in the Act and the Commissioner being proposed, the women activists argued that "it is not a question of semantics but of diametrically opposed concepts which could neither be amalgamated nor be a substitute for each other."²⁴ It was also argued that the government was obligated to set up the Commission as committed in the Parliament and, once constituted, the Commission could decide whether to create another office. Despite all these representations and arguments, the government announced the setting up of two Commissions. The women members in Parliament and women's organizations then took the technical position that the NCW Act having been passed by Parliament; it was incumbent on the government to consult the Commission before taking any initiatives with regard to women like setting up of new Commissions or a Commissioner for women's rights.²⁵

The process of constituting the Commission reflects the differences between the government and the women's organisations about how they perceived the institution. There were attempts on the part of the bureaucracy and those in power to keep the institution weak in its structure and powers by retaining certain provisions in the Act itself.²⁶ As the following details will make clear, right from its inception, the procedure for the appointment and status of the Chairperson and members of the Commission and the powers of the Chairperson vis-à-vis the Member Secretary and DWCD have remained contentious issues and had serious repercussions on the functioning of the Commission. According to the NCW Act the Commission will consist of a Chairperson and five members to be nominated by the central government. There is also a member secretary, a member of civil service and an expert in the field of management, organizational structure or sociological movement nominated by the central

government. All orders and decisions of the Commission are to be authenticated by the Member Secretary or any other officer of the Commission duly authorized by the Member Secretary. The Commission can appoint such committees as may be necessary for dealing with issues as it may take up from time to time. The Commission has a library and a research unit. It also constituted a complaints unit to look into the complaints of women; a counseling cell was added to this unit in 1996.

The Commission has been assigned a wide range of responsibilities. Section 10(1) of the Act enumerates the investigative, monitoring, evaluative, advisory, and remedial and awareness generation functions of the Commission. As an investigative agency, the NCW has the powers to investigate and examine all matters relating to safeguards provided for women under the Constitution and other laws, and to look into specific problems and situations arising out of discriminations and atrocities against women. While investigating any matter it can exercise the powers of a civil court to summon and enforce attendance of any person, and ask for discovery or production of any document, public record and evidence on affidavits.

In its advisory role, the Commission is to participate and advise on the planning process on issues concerning women. It has the specific task of recommending amendments to meet any lacunae, inadequacies or shortcoming in the existing legislations. The Commission has so far reviewed about 23 laws and made more than 700 recommendations to the government. The Commission has also brought out many special studies.

As a watchdog body, the commission is to look into and take *suo moto* notice of matters relating to non-implementation of laws that are enacted to provide protection to women and non-compliance of policy decisions, guidelines or instructions aimed at ensuring welfare and providing relief to women. It has the power to evaluate the progress of the development of women under the Union or any state. It is mandatory for the central government to consult the Commission on all major policy matters affecting women. The Commission is expected to prepare an Annual Report and submit it to the central government who, together with a memorandum of action taken report on the recommendations of the Commission, would lay it before each House of Parliament.

Appointment of the Chairperson and Members of the Commission

The Chairperson and members of the Commission are directly nominated by the central government for a period of three years. The Act lays down the qualifications of the members and the Chairperson and provides that at least one member each shall be from among persons belonging to the Scheduled Castes and Scheduled Tribes, respectively. The Act is, however, silent on the procedure for making such appointments. The demand of the women's organisations that the selection of the Chairperson and members of the Commission should be from a panel prepared in consultation with the representatives of the women's groups or be done by the same process used by the National Human Rights Commission (NHRC) has not been accepted.²⁷ There is no provision in the NCW Act to deal with a vacancy and caused problems in 1995 and 1998 when the NCW went without a Chairperson after their terms expired. Members and staff felt harassed because their authority was not acknowledged by senior government officers.²⁸

Political considerations have played an important role in the appointment of the Chairperson and members of the Commission. As one activist put it, "We lost on this right in the beginning". The non-institutionalization of procedures for the appointment of the Chairperson and members of the Commission has increased the possibility that competent and committed persons are less likely to get appointed as members and Chairperson of the Commission. The chairpersons and members have mostly turned out to be not more than nominees of the government in power, and many of them have had no history of working on women's issues. As a result, they lack experience and the necessary expertise and, since they have not worked on issues through social movements or otherwise, they lack the perspectives needed for processes of social change. Women who have remained active in the movement or are actively working on women's issues through campaigns or activist research have rarely found a place in any of the Commissions.²⁹

The political nature of the appointments has affected both the autonomous functioning of the Commission as well as its approach to an issue or intervention in certain situations or in dealing with the government and departments, both in its monitoring and recommendatory roles, because the Commission is constrained to act against those in power or those who have appointed them. For example the first Commission endorsed a retrograde amendment of the Maternity Benefit Act so as to limit maternity benefits for two children as part of the population policy of the Government of India in 1994. This endorsement was later withdrawn by the Commission, after women's groups protested.³⁰ The

recommendation resurfaced in a ten-year stocktaking report of the NCW titled 'A Decade of Endeavour -1990-2000'.³¹ The Commission's response to the violence on Muslim women in Gujarat in 2002 was the ultimate where the Commission seemed to be protecting the state government that was deeply implicated in that violence. It is important to note that the same political party was in power at the central and state levels, and the Commission evaded any censure of the government's complicity. Similarly, while it is mandatory for the government to consult the Commission on all matters pertaining to women, violation of this very clause of the Act by the government are routine, whether it is the drafting of the population policy or the New Education Policy, or preparing the Union Budget or a country paper on women or a National Policy for Women. Unfortunately, the Commission has also not asserted its rights to be consulted.

The manner of appointment, therefore, became the first major stumbling block in the autonomous functioning of the Commission. As one activist pointed out "Individuals who constitute the Commission are the Commission. This is the reality of the situation and that is why the selection process becomes important".³² The manner of appointments has also impacted on its relations with the government machinery. The bureaucracy does not seem to take the Commission seriously, as the members and the Chairperson are seen to be people who have been handpicked by the ruling government.³³

Status of the Chairperson and Members

The Act does not clearly define the status the Chairperson and its members. The issue has been raised at various levels by women's organisations³⁴ and by almost all the chairpersons who pointed out that this has impeded the efficient functioning of the Commission and has particularly impacted their interaction with government authorities.³⁵ Due to the undefined or perceived lower status of the Commission, it was difficult to deal with uncooperative officials who refused to recognise their position as an apex body on women's issues. For example, Vibha Parthasarthy, Chairperson of the third Commission, complained that it took months to get an appointment with the HRD Minister. She also pointed out that many times the Ministry took decisions without consulting the Chairperson to hold meetings or to decide as to who would be part of a delegation for certain meetings and when a letter was sent to the Ministry protesting that this overstepped the Chairperson's authority, she received no reply. Mohini Giri, the Chairperson of the second Commission, strongly asked for a cabinet rank for the Chairperson and members of the Commission. She argued that the NCW should be a body above the DWCD; she complained that many times the Member Secretary refused to sign cheques, thus halting work.³⁶

While the status of the Commission still remains unaddressed by the government, the following incident reflects the manner in which the bureaucracy treats an apex body like the NCW. In December 1997, the Secretary, DWCD sent a letter to the Commission saying that “for the sake of protocol in the warrant of precedence the Chairperson would be equivalent in the rank to a High Court Judge and members likewise would be equivalent to additional secretaries”.³⁷ The timing and the nature of the order are important here. The order came when there was no government at the centre. Any order on the status of the Chairperson and members of the Commission has to be through a government notification. This order was intended to determine the position for official government functions and had nothing to do with defining the position of the Commission vis-à-vis government officials.

Administrative and Financial Powers

In terms of administrative and financial powers, the Commission has been subordinated to the bureaucracy through its absolute dependence on the government for staff requirements, financial grants, the position of the Member Secretary and the constant assertion by the Ministry and the DWCD to control the Commission.. In 1992, when the Commission was first constituted, it was provided with a staff of 28 in various categories. Since the Commission has been working at the national level with a range of tasks, from the very beginning it raised the issue of inadequate staff in its Annual Reports.³⁸ The reports also pointed out that the problem of inadequacy of the required staff was being dealt with by recruiting retired government servants and other qualified personnel on an ad hoc basis.³⁹ Though nine more posts were created in January 1997, these related mainly to housekeeping and administration. To meet their requirements in specialized work such as review of laws, analysis of government policies, etc., the Commission once again decided to make ad hoc appointments.⁴⁰ In the absence of clearly specified rules, the decision was taken on the personal initiatives of then Chairperson. The bureaucracy viewed this as a transgression of the powers given to the chairperson and became an area of contention between the Commission and the DWCD. In 1998, after Chairperson's term expired, the Secretary of the DWCD issued an order that terminated the services of consultants and other staff who had been appointed by the outgoing chairperson on a daily or ad hoc basis. The order also placed a ban on further recruitment.⁴¹

The entire episode brought out the tension between the Commission and the DWCD over the administrative and financial autonomy of the Commission. The power to terminate the services of the staff was derived from the regulations/

rules of procedure framed in 1995 by the then Advisor to the Commission. These regulations gave powers to the Member Secretary (a civil service nominee of the central government) that were far reaching in their implications for the autonomous rights of the Commission. The staff crunch that resulted from this order not only affected the overall work of the Commission but also forced it to close down its 24-hour emergency help-line for women. One member of the Commission on anonymity said that for once all the members of the Commission thought of resigning en masse, frustrated over the staff crunch and the non-cooperative attitude of the Ministry as the period was also marked by the absence of any officiating Chairperson.

Though the staff requirements of the Commission were finally assessed by the government's Staff Inspection Unit (SIU) in January-February 1999, so far the sanctioned posts have not been filled. Even the recommendation of the Committee on Empowerment of Women (2001-02) that "the Commission should have the freedom to appoint its own requisite staff within the allocated funds and till such amendment is made in the Act, the additional workforce asked by the Commission should be immediately provided by the Department of Women and Child Development"⁴² has not been heeded. The Annual Reports of the Commission from 2000-2001 to 2003-2004 indicate that due to the staff shortage, the Commission was forced to make ad hoc arrangements including four counselors who have been kept on a contract basis.

The Commission has been constantly writing to the government for clarification on many issues, but many of its letters have received no response from the government officials. To quote an activist in the women's movement, "[t]he status means a lot in terms of dealing with the bureaucracy and in terms of political aura of the institution whereas the Commission is both administratively and financially under the control of the Department of Women and Child Development. Instead of being an autonomous body and a power centre, the Commission seemed to be deriving its power from the Department of WCD." The position of a Member Secretary, who is an IAS officer from the Ministry, has further given a handle to the power play between the Commission and the bureaucracy, a point that will be discussed below.

Chairperson and Member Secretary: Two Power Centres in the commission

In the Commission, the Chairperson and the Member Secretary have become two focal points of power. Other similar commissions do not have a position for

a member secretary, but only have a secretary to the commission. The fact that the term used is Member Secretary and not merely Secretary of the Commission brings her at par with other members of the Commission. The Member Secretary is nominated by the central government for a term of three years and derives her powers from Regulation 16 of the National Commission for Women (Rules of Procedure) Regulations adopted in 1995. According to these regulations, the Member Secretary is the administrative head of the Commission to “supervise on the smooth functioning of the Commission, including the Secretariat, its officers and employees”. She is also to oversee the receipt of grants from the government and their disposal under Clause (d) of Regulation 16. The Member Secretary also has the right to examine all cases where it is necessary to invoke powers under Section 10(4) of the Act, which gives the Commission the “powers of a Civil Court trying a suit”.

The powers given to the Member Secretary under these rules has created an ambiguous situation in decision-taking between the Chairperson and the Member Secretary, with the latter trying to control the functioning of the Commission on matters of administration and financial expenditure. Members of the Commission generally felt that they were subordinated to or ignored by the Member Secretary. There were instances where meetings of the Commission were chaired by the Member Secretary in the presence of other members of the Commission. This not only affected the public image of the Commission but was also a manifestation of the steady erosion of the status of the Commission that looked like a government organization headed by a government officer. Certain loopholes left in the NCW Act were also used by the DWCD as represented by the Member Secretary in the Commission to stall the Commission's functioning. For example, the Act is silent on the matter of officiating Chairperson in case a vacancy occurs due to retirement or another reason. In 1998 when Mohini Giri left after completing her term as Chairperson, for more than two months there was no one to head the Commission. Tensions between the Member Secretary and the Commission marred the period. The Member Secretary then proceeded on leave, after informing the Secretary of the DWCD. In the absence of any officiating chairperson, the members of the Commission faced a difficult situation where senior officers in the government did not acknowledge their authority. The members of the Commission shared their concerns with women's organizations and asked for an open debate on the issue of ministry intervention in the affairs of the Commission.⁴³ The women's organisations pointed out the need to assert the Commission's powers to frame interim procedures under Section 9 of the Act. Though this was done by the Commission in 1999 when it scrapped the 1995 rules and adopted a new set of

rules framed by a three-member Committee set up for the purpose, the status of these rules is still not clear.

In another instance in the year 2002 the financial powers of the Commission were amended by an office memorandum dated 20th September 2002, under the signature of the Joint Secretary of the DWCD.⁴⁴ The order supposedly enhanced the powers of the Chairperson but actually struck at the root of the financial autonomy of the Commission. The background to this office memorandum was again provided by a prolonged and bitter power struggle between the NCW Chairperson and the Member Secretary. The memorandum came as a result of a strong letter by the Chairperson to the DWCD about the functioning of the Member Secretary. The Department acted fast to remove the officer, but also sent this memorandum which, on the one hand, gave greater powers to the Chairperson for office and establishment expenses, but on the other resulted in the DWCD acquiring greater control over the NCW's finances by making it mandatory for the Commission to consult the Department for various expenses.⁴⁵ The DWCD obviously used the battle between the Chairperson and the Member secretary to dilute the autonomy and independence of the Commission.⁴⁶ Two previous Chairpersons (Mohini Giri and Vibha Parthasarthy) had earlier complained that they had problems with the Member Secretary's power to sign every cheque. On this issue, the department/ ministry feels that a lot of money is being spent without accountability, so there is a need to restrain this.⁴⁷ Surprisingly, the Commission did not protest against this order by the DWCD.⁴⁸ Women's groups, frustrated over the silence of the Commission on the order, registered their protest both to the Commission and the Ministry of Human Resource Development, pointing out that the order was ultra vires of the NCW Act and had the effect of reducing the Commission into a department of the government.⁴⁹

The issues of autonomy of the Commission and how this institution is perceived by the bureaucracy came up in a different manner over the release of a Survey Report of the Commission in 2004. The report was scheduled to be released before the 2004 general elections. The Secretary, on her own, postponed the release, saying that it would go against the election code, while the Chairperson wanted otherwise. The argument that it was not a government report and that the Commission is an autonomous body did not prevail on the Secretary.

The above instances indicate how an autonomous institution is perceived within and outside government and bureaucratic circles. In the case of the NCW, the fact that the institution is meant to address women's issues - an area

always accorded lesser importance - has also contributed to lowering its status. The institution is not taken seriously. Its grants come through the Department and its Annual reports are placed in Parliament through the Department. The cooperation of the Commission with the Ministry should only be within the framework of the Act. But as is evident from the above details regarding the role of the Member Secretary vis-à-vis the Chairperson and members of the Commission and from the Commission's dependence on the Department for various things, the Commission has not been able to assert its autonomous status. The Chairpersons have expressed their displeasure over such interventions that have ranged from routine matters like deciding whether the Department or the Commission would be representatives on programmes concerning women to asking for staff requirements, Commission expenditures, or seeking clarifications about the status of the Commission. Since the Commission is a statutory body, it is Parliament that should decide its powers and not the Ministry,⁵⁰ as the Ministry itself is a body whose policies and actions are supposed to be monitored by the Commission.

The Commission at Work

Having discussed the above, it needs to be pointed out that institutions cannot be appraised solely in terms of the formal structure. Though the formal powers and status of any public institution has an important bearing on its functioning, the manner in which these powers are used to fulfill the objectives for which it has been created can have an important bearing on its performance. The powers and position can be creatively used to enhance their status and effectiveness. At the same time, institutions can abdicate their powers by choosing not to exercise them. Thus, statutory autonomy may be necessary but not the most important thing to ensure real autonomy. The following section will evaluate the functioning of the Commission in the above context.

The Commission carries out its functions at different levels. The annual and other reports prepared by the NCW provide information about its work, manner of functioning, perspective and the problems it faces. To date, the Commission has submitted 11 annual reports to the government, the last one for the year 2003-2004. There have been delays by the Commission both in submitting the reports as well as in tabling the Action Taken Reports (ATRs) before both Houses of Parliament.

The ATRs for the first 10 years of the Commission reveal that in most cases the recommendations are at various stages of consideration either at the state level or with various government ministries or departments.⁵¹ The

accepted recommendations were for providing financial assistance to different categories of women under government schemes and for conducting training programmes. Some recommendations on women and media were also responded to by laying down stringent codes to curb vulgarity, crime and obscenity in the print and visual media.⁵² For most of the other recommendations, the Commission in its 2000-2001 Report has urged the government to obtain the latest status reports and provide the Commission with action taken.⁵³ The Commission has repeatedly asked the government for greater co-ordination between the concerned ministries/departments of the Government of India and state governments so that speedy action can be taken on the Commission's recommendations. The Commission's observation in its Annual Reports that women's cells within various departments or ministries of the government have not been functioning has not been heeded. To quote the former Chairperson, Mohini Giri, "A plethora of recommendations made by NCW since its constitution in 1992 is lying in cold storage. These recommendations have neither been accepted nor rejected. All the work done by NCW seems to be going waste".⁵⁴

As to the mandatory provision that the government is to consult the Commission on all policy matters concerning women, various members and chairpersons of the Commission have pointed it out that the Commission is mostly informed after the decisions have already been taken by the government. The reports of the past years indicate that the NCW is being ignored by the government on policy issues. The most glaring example of this has been the National Policy for Women that was prepared by the DWCD under the Ministry of Human Resources, and was only later sent to the Commission for its comments. Similarly, in 1993, the Government of India appointed an expert group on population policy that did not have any representative from the Commission. The Commission was also not consulted on the draft of the Agricultural Policy, 1993. The period was characterized by major changes in the direction of the government's economic policies, with their adverse impact especially on poor rural women. The Commission was not consulted at any step on the fall-out of these policies on women. Even during the preparations for the Beijing conference (1995), it was the Ministry to the exclusion of the Commission that worked on the Country paper for the conference.

This brings us to the question of how the institution has evolved by developing procedures for its effective functioning and/or by using spaces available to it by those at the helm of affairs in the institution, the institutional resources that they draw on and the initiatives that they take to bring credibility to the institution and make it effective in terms of its stated goals.

The NCW Act stipulates a wider area with regard to the functions and role of the Commission that gives the Commission a lot of scope for interpreting its role as well as intervening at various levels. This also provides a lot of space for Chairpersons and members of the Commission to plan their work. But the functioning of the Commission indicates that each Commission has been functioning independently of the work done by the earlier Commission and the Chairperson's role has remained crucial in deciding the focus of work during her tenure. Even the members of the Commission are not able to play a meaningful role in providing continuity. As a result, the functioning of each Commission reflects the perception of the Chairperson about the role of the Commission, which then changes with the change of Chairperson. A brief overview of the first four Commissions highlights this pattern.

The functioning of the first four Commissions points to each Commission having a different agenda to work on, while the manner of their functioning demonstrates a similar pattern. The first Commission identified the review of legislations, evaluation of development policies on women and study of the impact of economic reforms on women as its core areas of work and gave important recommendations with regard to the public distribution system. But the Commission was unable to make any impact on the policy-making process, since it was ignored on many occasions such as the drafting of the Population Policy and Agricultural Policy and other decisions that formed part of the liberalization process. The fact that the Commission did not even protest this and did not try to assert its powers came in for criticism from women's organizations. The Commission's decision not to send its team to areas affected by communal riots following the demolition of Babri Masjid in 1992 with a view to assess the impact on women needs to be seen in the context of the Commission's proximity to the government in power.

The Chairperson of the second Commission, Mohini Giri, tried to bring dynamism to the body and give it visibility. The priority areas identified by the Chairperson were: speedy justice to women, legal awareness, and studying and bringing official attention to the problems of widows, prostitutes, women prisoners and women belonging to Scheduled Castes and Tribes. The Commission gave highest priority to the 'political empowerment of women', organised workshops and seminars, and worked with women's groups on raising awareness on this issue.⁵⁵ It worked with political parties, NGOs, the media, etc. to get support for the Bill on Reservation of seats in Parliament and Legislatures for women. The Commission added a Counseling Cell to the existing Complaints Unit and a new concept of Parivarik Mahila Lok Adalat was introduced in view of the huge number of cases pending with it. It also set up a Helpline Control Room

that could attend to the complaints of women beyond the normal working hours of the Commission. The Commission made visits to mental asylums and prisons, and tried to bring public attention to the pathetic conditions in which women were kept there. It also took up the review of laws concerning women.

In comparison to other Commissions, the second Commission seemed to be more responsive to women's organizations and tried to interact with them. The Commission took some new initiatives and gave fresh input to areas of individual counseling and complaints. With a view to reduce the Commission's workload, it recommended decentralization of work and a separate position for Commissioner for women's rights with judicial powers.

For the third Commission the major focus was networking and organizing workshops for awareness generation. The Commission also visited a number of prisons and custodial institutions to study the conditions of women kept there. Though the Commission reviewed some laws, it maintained that the problem is only at the level of implementation. In the understanding of the Commission, raising consciousness, generating awareness and imparting information on women's issues would ensure women's development.⁵⁶ Accordingly, the recommendations of this Commission laid more emphasis on providing education and credit facilities and on increasing the skills of women. This meant that Commission kept a soft agenda for itself and was not very clear about its role as a monitoring body.

For the Chairperson of the Fourth Commission, the *raison d'être* of the Commission was to attend to the individual grievances of women. In the words of the then Chairperson, Poornima Advani, "the Commission exists to redress women's grievances."⁵⁷ She proposed to revamp the existing procedure for handling grievances and involve the Commission directly in the hearing of complaints and their resolution. Thus, counselors were brought directly under the members of the Commission and were required to report and discuss all complaints coming to the Commission. The Chairperson, with a view to increase the involvement of the Commission in the planning process, worked towards preparing gender profiles of all the states and Union Territories in matters of employment, health, education, welfare, political participation, etc., making this its area of priority. The tenure of the fourth commission was marked by a series of consultations, meetings and workshops on a range of issues, including the ones mentioned above.

Despite the fact that this Chairperson viewed the redressal of women's grievances as the main function of the Commission, the Commission's response to targeted sexual violence on women in Gujarat in February 2002 and its silence

on the issue of the complicity of the state government, right in the beginning of its tenure, went against its own stated objectives. It put a question mark on the credibility of the institution and brought the issue of the autonomy of the Commission and its role as a watchdog and monitoring body into public debate. A detailed analysis follows in the next section.

This overview indicates that each Chairperson had different perception about the role of the Commission, and the functioning and activities of each Commission reflected that perception. As a result, each Commission worked more or less independently of its predecessor and the institution, as such, was not developed. The following section looks at the functioning of the Commission on the issue of violence against women, focusing on the areas of domestic violence, sexual harassment and sexual violence that have been focus of feminist interventions in the 1990s.

Addressing the Issue of Violence against Women

In the last three decades, women's movements have sought specific state interventions in the areas of domestic violence, sexual harassment and sexual violence, with a view to get public and legal recognition and redressal. The experiences of working with the changed laws in cases of domestic violence and rape brought in a considerable shift in understanding these kinds of violence by women movements the early 1990s. In their engagement with the formal law, women's groups felt the need not only to widen the definitions of such violence but also to explore newer ways to seek redressal. There were efforts to shift the debate in the context of rights and push the judiciary and legislature to reckon with international standards of human rights in cases of violence against women. Thus, on the issues of domestic violence and sexual violence, the process to reconceptualise and redefine these within the Indian legal regimes had already begun by the early 1990s. By the time the Commission came into existence, efforts towards drafting new legislation in these two areas had also started. The shift in understanding sexual harassment came with the Bhanwari Devi (1992) and Rupan Deol Bajaj (1995) cases. Although both cases opened up a range of issues, two important issues were of the rights of women to safety and dignity in workplaces and changing the norms of acceptable behaviour from frivolous 'eve teasing' to sexual harassment. While understanding the limitations of the law in changing ground realities, women's organizations were looking for ways to open the private sphere to public scrutiny and to use the public law in more effective ways. The following section will assess the functioning of the Commission from two angles: as an autonomous and apex institution to

protect the interests of women, what has been the nature and manner of its interventions and to what extent have they come closer to the expectations of women's groups of such an institution. In assessing the Commission's performance, its role in law reform processes and intervention in individual cases of violence against women and in cases of communal violence and violence by state agencies will be analysed.

Law Reform: Processes and Perspective

A review of the existing laws regarding women has been a consistent focus of the Commission's work. The normal pattern has been to constitute committees that include experts from different areas like lawyers, academia, civil services and women's groups from outside the Commission with one member of the Commission as Chairperson. The first Annual Report of the Commission gave the number of Committees constituted for the purposes and also gave the names of the persons constituting these Committees. This practice was not followed thereafter in any of the Annual Reports and, thus, it is difficult to know how these committees have been functioning. In the absence of institutional mechanisms to carry forward the work of each Commission, there has been a tendency to either repeat the work already done or suddenly pick up or drop Bills.

As for the NCW's efforts to involve women's organizations in law reform processes with the twin objectives of broad-based participation and gaining legitimacy, the experience speaks of the ad hoc and poor functioning of the institution. Women's organizations have pointed out about the manner of calling meetings to discuss important issues when either the relevant papers were not available or the notices reached them only after the meetings had already taken place. There have been complaints of selectively sending the notices, lack of preparation for meetings, lack of understanding of issues at hand, sudden picking and dropping of issues or not heeding the opinions of women's groups while sending recommendations to the government or bills with regressive provisions being placed in Parliament.⁵⁸ The following details about the functioning of the Commission on the issues of domestic violence, sexual harassment and rape/sexual assault substantiate the above.

Domestic Violence

When the Commission came into existence in 1992, the process of framing a comprehensive legislation on domestic violence against women was already on

among a collective of women's organizations coordinated by the Lawyer's Collective, a Delhi-based group working on issues of socio-legal concerns. A model Bill was drafted with a view to give legal recognition to day-to-day violence on women in families not related to dowry. The Bill was intended to deal with the relief that could be given to protect the women from violence and raised the issue of the rights of women to matrimonial property. The emphasis was on combining criminal and civil remedies for women.

Based on this model draft the Commission prepared a Bill for the prevention of domestic violence. The Bill titled The Domestic Violence on Women (Protection) Bill, 1994 was forwarded to the government with a request that the Bill be tabled at the earliest in Parliament.⁵⁹ The first three annual reports mentioned about this process, but there is no reference to it in the 1995-96, 1996-97 and 1997-98 Annual Reports. The period also saw changes in the composition of the Commission after the tenure of the first Commission was completed in 1995 and the new Chairperson took over in July 1995. Though the 1996-97 Report claimed to be 'taking up the herculean task of reviewing the 39 legislations concerning women as part of the Common Minimum Programme of the government',⁶⁰ the list did not include the Bill on Domestic Violence and no reasons were mentioned for dropping it. The demand for a law on domestic violence resurfaced in the Annual Report 1998-99.⁶¹ The 1999-2000 Annual Report, without referring to the Bill that had already been sent to the government for consideration, once again recommended a comprehensive legislation that dealt with criminal and civil remedies to violence within marriage. It also pointed to the need to elaborate on the definition of 'cruelty' in Section 498A. This shows that the third Commission had not updated itself with the work of the earlier Commissions. The exercise was repeated since the year 2001 was declared Women's Empowerment Year by the then ruling government. As part of the government's agenda, the DWCD included it in its 'must do' list of the review of various laws concerning women that it sent them to the Commission.

By this time, the Lawyer's Collective in consultation with other women's groups had prepared a fresh draft of the Domestic Violence to Women (Prevention) Bill 2001 and submitted it to the NCW. The Government of India also released a Bill titled "The Protection from Domestic Violence Bill 2001". This Bill was completely different from the draft bill that women's organizations had submitted to the NCW, both in its perspective and the remedies to be provided. It was regressive in many ways as it defined domestic violence as "habitual assault and making the life of the aggrieved person miserable by cruelty of conduct, forcing the aggrieved person to lead an immoral life or otherwise harming

or injuring the aggrieved person". The Bill also stated that "nothing contained in the above clause shall amount to domestic violence if the conduct by the respondent was reasonable for his own protection or for the protection of his or another's property". This left a lot to the perception of individual judges about what constitutes violence and condoned violence done in self-defense or to protect one's property. The Bill did not mention the rights of women in the matrimonial house. The women's groups rejected the Bill in totality and launched a nationwide campaign to put pressure on the government not to pass the Bill in that form.⁶² The NCW also made a critique of the Bill and asked the government to review it, taking into consideration all the objections that were raised.⁶³ However, the campaign to carry this forward was undertaken mainly by women's groups who held meetings in cities across the country to bring public attention to the regressive aspects of the Bill and strategise further. Meetings were also held with the State Minister for Women and Child Development and the then Law Minister who was resistant to deleting the provisions of the Bill regarding the use of violence by the husband either for his own protection or for the protection of his or another's property. The Law Minister was also unwilling to give any assurance on the issue of women's rights to reside in a shared household.

In the context of the NCW, the entire process reflected the manner in which the government tried to go ahead with total disregard for the recommendations of an autonomous and apex body. It also points to the ignorance of the NCW about the contents of the Bill being introduced in Parliament, which means that the Commission was not consulted by the government before the Bill was placed in Parliament. It also highlights the lack of a pro-active role by the Commission, whereas the women's organizations actively worked towards ensuring that the Bill was not passed in that form. It took another three years of a vigilant campaign by women's groups to get the Protection from Domestic Violence Bill, 2005 passed in a form that included their major demands.

As to the Commission's work in cases of violence against women, from 1997 onwards with the setting up of a Pre-litigation and Counseling Cell, complaints were grouped into 22 broad categories.⁶⁴ Surprisingly, these categories did not include *domestic violence* and no one from the Commission was able to explain this omission. The counselors and members I talked to did not seem to know the reason for this despite the large number of cases of domestic violence coming to the Commission as reported by the counselors. In a report compiled by Saraswati Haider titled "*Creating a Window to Redress Women's Grievances*" *Research and Documentation Project on Mediation, Counselling and Conflict Resolution*, it was observed that the Section Officer in-charge resisted including this category.⁶⁵ As to the approach in dealing with these cases, the emphasis has been on

reconciliation in the interest of family and children. The counselors I spoke to indicated that the lack of powers of the Commission to get its orders enforced and highly inadequate infrastructural facilities and staff have led to a tendency to closing cases in this manner. As one counselor pointed out, when a court order is passed for alimony or maintenance, it has more authenticity than the orders of the NCW. Though there is provision for free legal aid from the NCW, the Commission does not involve itself in court cases. The somewhat good record of the Commission has been in cases of retrieving dowry, as was mentioned by the same counselor. Many members and Chairpersons of the Commission mentioned that the Commission should be granted greater penal and prosecution powers and the power to grant compensation to victims of violence.

Sexual Harassment

The early 1990s marked a shift in approaching the issue of sexual harassment at the workplace, a problem that had largely gone unrecognized both because women hesitated to talk about it and also because of the manner in which it was perceived as frivolous eve-teasing. A writ petition filed by women's groups collectively as *Vishakha vs State of Rajasthan* raised the issue within the framework of a safe work environment for women and sought the "enforcement of fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India in view of the prevailing climate in which violation of these rights is not uncommon". The Supreme Court judgment, accepting the argument of women's constitutional rights and the need to remove hazards posed by sexual harassment, issued a set of guidelines – usually referred to as the Vishakha Guidelines – to deal with the problem. Following the Vishakh guidelines, women's groups have lobbied both with the government and private employers for the implementation of these guidelines with a view to eliminate hostile work environments and seek effective remedies in harassment cases. While the Vishakha judgment signified a major step forward in understanding and interpreting discrimination against women and the violation of their rights at the workplace, the NCW's manner of working by way of drafting a model code of conduct and then a Bill against Sexual Harassment at the Workplace points to a complete lack of understanding of the issues involved. In 1998 the NCW formulated a Code of Conduct for Work Place with a view to putting down the Supreme Court guidelines in a simple manner. The booklet gave no definition of Sexual Harassment at the workplace. It listed many things that can constitute sexual harassment, retained expressions like eve teasing, and attempted to explain eve teasing and sexual harassment separately.⁶⁶ A reading of the booklet indicated no in-depth understanding of the issue.

In November 2000 the Commission held a number of meetings with government ministries/ departments, Public Sector Undertakings, public sector banks and educational institutions to share experiences/ difficulties faced by these organizations in handling cases of sexual harassment with a view to draft a Bill on sexual harassment at the workplace. This process did not include meetings with women's organizations. The Commission drafted a Bill and sent it only to the Young Women's Christian Association (YWCA) in Delhi; no other women's group was given information. After receiving a copy of the Bill from the YWCA, a delegation of women's groups met the Chairperson of the NCW and pointed out the arbitrary manner in which the process of consultation excluded a number of women organizations working on the issue as well as the selective manner of sending a copy of the Bill to only one women's group. The delegation also pointed out the importance of an in-depth review of the functioning of the Complaints Committees in cases of sexual harassment before bringing in any legislation in this regard. It also demanded district- and state-level consultations in order to rectify the lacunas in the Bill and wanted a national core committee that included persons with a legal background to be constituted to draft a model bill. After getting no response from the Commission for five months, 21 women's organisations from many parts of the country (Delhi, Mumbai, Goa, Calcutta, Bangalore, Manipur, Gujarat, Kerala, and West Bengal) sent a letter to the Chairperson of the NCW on November 11, 2001 that summarized their reservations on the Bill.⁶⁷

The pressure from women's groups forced the Chairperson to constitute a Drafting Committee consisting of representatives of women's organizations and members of the NCW in April 2003. The meetings of this committee were also called in an arbitrary manner. Women's groups again sent a detailed note on the Draft bill. In 2004, the Commission called another National Consultation on Sexual Harassment at Workplace (Prevention) Bill, drafted by the NCW. The draft bill still did not incorporate the suggestions of the women's groups nor did it address the concerns raised by the women's groups. The copy of the Bill that was sent along with the notice of the meeting was the same as the earlier version of the Bill. This was brought to the notice of the Commission in a carefully drafted letter that graphically detailed the process that has been going on since the year 2000, with the NCW not heeding the points raised by women's groups..⁶⁸ As a result of mobilization by women's groups, the Chairperson was forced to consider the points they raised. On their own the women's groups held national-level discussions in January 2005 to finalise the Bill.

The entire process reflects poorly on the work culture of the Commission. The process shows not only their ad hoc and arbitrary manner of functioning, but

the non-seriousness with which such a law was being drafted. The proceedings of the meetings revealed the lack of experience of the members of the Commission and their unwillingness to keep updated and informed,⁶⁹ both in terms of actual work on issues concerning women and the ongoing debates. There were clearly differences between the NCW and the women's groups in their perceptions, understanding and strategies of dealing with the issue. This is an important example of how women's groups need to monitor the work of the Commission so that women's concerns get incorporated in the Bills and policy recommendations made to the government. Every time this Bill was taken up, the women's groups needed to be vigilant about the version being tabled in Parliament. In August 2007, the Minister for Women and Child Development announced that the Bill against Sexual Harassment at the Workplace would be tabled in Parliament, but it was discovered that once again the Bill was still vague and had loose definitions because the suggestions of the women's groups had not been incorporated and the old Bill was being circulated in government circles.

Sexual Violence

In 1980, the Supreme Court judgment in the Mathura rape case crystallised and focused the energies of women's groups all over the country on various dimensions of sexual violence, more specifically the biases prevailing against women at the levels of law, legal and judicial process.⁷⁰ Since then, the issue of violence against women, especially sexual violence, has taken on new dimensions and the movement has been made to address a whole array of forms of violence – revenge rapes, power rapes, gang rape, rape of lower-caste women by upper-caste men, ethnic and communal sexual violence, sexual violence in situations of armed conflict, sexual violence by state agencies, child sex abuse, and so on. Accordingly, work on law reform in this area required a nuanced understanding of the issues involved in the context of women's experiences. In the area of law reform relating to sexual violence on women, the post-1990s efforts of women's organizations were directed towards widening the definition of rape and the procedures to be followed in the courts. At another level, the issue of sexual violations of women in situations of communal violence and armed conflict, both with the complicity of state agencies and by state agencies with impunity, normalized this violence in the name of 'national security'. Focusing mainly on sexual violence on women of the Muslim community in Gujarat in 2002 and sexual violations of women in highly militarized zones of Jammu & Kashmir and the North-East by the state security forces, the following analysis will look at the functioning of the NCW in performing its role of investigating and examining safeguards provided to women under the Constitution and other laws and looking

into specific situations arising out of collectivised sexual violence by communities and agents of the state.

In 1991, in the context of experiences of working with victims of sexual abuse, in a meeting in Bombay, women's groups made recommendations on the rape law so as to include child sexual abuse within the definition of the law. In addition, with a view to include various kinds of violence that are sexual in nature but may not fit in the traditional definition of rape, the wider term 'sexual assault' was suggested. In 1992, the NCW set up an ad hoc Committee that included members of women's organizations to make recommendations on the law relating to the rape of minors. The Committee suggested extensive changes in the laws relating to sexual assault. Most importantly, it recommended that the entire law of rape should be redefined in terms of varying degrees of sexual assault and should include not merely penetration by the penis into vagina, but should also include penetration into any orifice by the penis and penetration of the vagina and anus by other objects like sticks, bottles, etc. Making a minor perform sexual acts on another person was also defined as sexual assault. The Committee also recommended expanding the category of aggravated sexual assault to include sexual assault by army personnel, by persons in positions of trust and authority and persons of economic and social dominance. It was also suggested that aggravated assault should be expanded to include sexual assault of a protracted nature, sexual assault which causes grave physical harm or maims a woman or a minor, and sexual assault on a person suffering from mental and physical disability. Several amendments relating to procedures to be followed in rape trials and different punishments for different kinds of assaults were also suggested.

In response to the above, the Criminal Law Amendment Bill, 1994 prepared by the NCW included only cosmetic amendments to the rape law. The Bill recommended raising the punishment for sexual assault with the intention of outraging the modesty of a woman under Section 354 of the IPC if the woman was between the ages of 8 and 18 years. The women's groups have for long shown their discomfort with the language 'outraging the modesty' as it sets the framework of 'modesty of woman' and does not address the issue of violence in terms of experiences of such violence of women and children. The Commission did recommend certain amendments to the Code of Criminal Procedure that included appointment of a woman prosecutor, the hearing of rape trial to be presided over by a woman judge, and putting a time limit on the trial. The Annual Report 1994-95 indicated that the Bill was with the Parliamentary Standing Committee and was sent back to the Commission for its comments. However, the Annual Report 1996-97 did not mention this process and merely

listed its concern at the alarming increase in incidents of rape in the country and suggested that the “successful conviction of the offenders could be made more effective only by tightening of the laws of rape both in substantive and procedural matters.”⁷¹ For this it proposed an ordinance to amend the rape laws. Based on the 1994 bill, the President of India passed the Criminal Law Amendment Ordinance, 1996, but the ordinance lapsed after six months as it was not passed by Parliament. There is no reference to the fate of this Bill/Ordinance in any of the subsequent reports (reports available till 2003-2004). Instead, the 1998-99 Annual Report of the Commission mentioned a country-wide project of debates and discussions on the existing laws concerning rape with a view to proposing amendments so that the relevant Bill could be presented to Parliament as early as possible.⁷² The 1999-2000 Annual Report refers to a study done by the NCW, based on the suggestions and recommendations at various workshops across the country, where the relevant sections of the IPC, Code of Criminal Procedure and Indian Evidence Act were examined. It then merely summarised the opinions obtained on various issues in the workshops held in 16 states, with no mention of what would be done with these opinions. On the other hand, a report titled *Rape: A Legal Study* was brought out by the Commission from these country-wide workshops that put forward the extraordinary notion that until the 8th century A.D. women in India enjoyed a high status in society and their subjugation began as a result of foreign invasions.⁷³ The report was severely criticized by women’s groups all over the country not only because the report was factually incorrect and the manner in which it treated the issue of rape, but, even more importantly, because it selectively used and interpreted historical sources that promote and legitimize a particular ideological and communal viewpoint. Women’s groups demanded that the Commission explain whether it officially endorsed the idea that the patriarchal society emerged in India in the post-8th century and also whether it endorsed the view of some workshop participants to restore the high status that women enjoyed as ‘ardhangini’, ‘grahlaxmi’ and ‘dharampatni’. Though the Commission withdrew this report under pressure from the women’s movement, the member in whose name this report was brought out was promoted to Chairperson of the fourth Commission (2002-2005).

The need to review the conventional definition of rape and classification of penetrative abuse of a child below the age of 12 years as ‘unnatural offence’ under Section 377 or as ‘outraging the modesty of a women’ under Section 354 was taken up in a writ petition filed by Sakshi, a women’s group, in a case of sexual abuse of an 8-year-old girl by her father. In the context of this writ petition, the Supreme Court directed the Law Commission of India (LCI) to look into the existing rape laws and give recommendations.

The Law commission in its 172nd report recommended changes to widen the scope of the offence under Section 375 and make it gender-neutral.⁷⁴ Based on these recommendations women's groups drafted the Criminal Law Amendment Bill, 2000. It substituted the word 'rape' with an expanded definition of 'sexual assault'. The definition of 'consent' was also improved and the definition of 'custodial' was expanded to include a person 'in uniform', or being in a position of social and economic dominance. Important suggestions on procedures to be followed in courts and police stations were included and the archaic definition under Section 509 of outraging the modesty of women was dropped. Since the range of issues covered by the Bill related not merely to women but also child victims of sexual abuse and lesbian and gays, the Bill invited a lot of attention from people working in these areas. In a national-level meeting in Mumbai in January 2002, the bill was thoroughly discussed by women, child rights groups and LGBT (Lesbian, Gay, Bi-sexual, Transgender) groups. There was a plan to meet the Law Minister at the end of February 2002, which did not take place because the women's groups were thrown into addressing the unprecedented situation created by the genocide of Muslims and the sexual assault on women of the Muslim community in Gujarat in end-February 2002. The Bill since then has not been pursued by the NCW with the governments in power and is still pending to be placed before the Parliament.⁷⁵

Sexual Violence and State agencies: Cases of Gujarat, Jammu & Kashmir and the North-East. Of late, the women organizations have taken up the issue of increasing sexual violation of women by state agencies in situations of communal violence and armed conflict. State complicity in collective communal sexual violence against women, either through direct involvement or through inaction, the frequency of which has increased over the years, has two implications. First, it sanctions violence against its own citizens. Second, it empowers communities and state agencies to legitimately use violence because they enjoy immunity in the name of national security or community in danger. As a result there is a tendency amongst the armed forces or community panchayats of treating themselves above the law by raising the imagined threat from the 'other'. The state institutions that are meant to enforce the rule of law thus end up furthering patriarchal attitudes and violent practices that characterise the domestic and civil society spaces for women. Such situations make redressals almost impossible. These situations specially call for the interventions of autonomous institutions like the NCW to investigate the conduct of state agencies and strengthen the redressal mechanisms by putting pressure on the governments in power. The record of NCW in these situations, as the following analysis will reveal, has been disappointing as the Commission has failed miserably in its role as an autonomous

and independent institution to raise the issue of arbitrary use of powers by the state and demand the accountability of the state in these matters.

Gujarat 2002

Gujarat 2002 presented a spectacle of open and unabashed participation by the state government in the genocide of the Muslim community that violated every norm of governance and accountability. During the 72 hours when this violence continued unabated, mostly by the inaction of state administration and police, women were made targets of sexual violence that was not only unprecedented in scale and brutality but also had the support and protection of the state government. Most importantly there was a pattern in this violence where women were first attacked as members (read 'honour') of the other community and, secondly, as biological and cultural producers of the community.⁷⁶

The fact finding reports by civil rights groups, women's groups and constitutional state bodies like the National Human Rights Commission pointed to the complicity of various arms of the state in the attacks and violence against the Muslim community and their role in inflicting sexual violence on women, destroying property and killing members of the Muslim community.⁷⁷ Although the reason for this large-scale violence was supposedly the burning of a bogey of the Sabarmati Express in Godhra on 27th February 2002 that killed about 56 people belonging to the Hindu community, much evidence revealed the planned nature of these attacks and a systematic attempt to identify Muslims in various areas by singling out their homes and establishments much ahead of 27th February. The reports also revealed that arms had been procured and widely distributed as part of the plan to target the Muslim community. About 19 districts of Gujarat were engulfed in the most organized armed mob attacks marked by large-scale hacking, looting, raping and burning of men, women and children from February 28 to March 3, 2002. According to unofficial estimates, about 2,500 people were 'missing' (or killed) and around 113,000 people were displaced and were living in relief camps.

Violence against women was a crucial element of how these massacres were executed. Rape, sexual assault and humiliation were some of the most systematic and consistent mechanisms for violating the Muslim community. The widespread abdication of duties by the law enforcement machinery at all levels, the consistent pattern of such abdication across the state, and the near absence of any state relief and welfare measures for those affected by violence pointed to the complicity of the state government. Despite protests by citizens, civil rights groups, women's groups and political parties, the central government

stood firmly behind the state government by denying any investigation by Amnesty International or other international organization. The NCW significantly did not even make a statement on the condition of women in Gujarat till after 50 days of continuous violence.

As an apex body to look after the interests of the women of the country, the NCW was expected to come out strongly on the issue of sexual violence on women, fix the responsibility on the relevant authorities for not providing enough safety, and work to get the guilty punished. The Commission sent its team to Gujarat after about 50 days of continuous violence. The report⁷⁸ that was released after almost two months focused mainly on police excesses, the poor conditions in the relief camps and insufficient relief, and the apathy of society towards the plight of the victims. The report was totally silent on the involvement of the state government and administration during the violence where one community was targeted with impunity. The report not only failed to criticize the role of the state government in its support to large-scale violence, but there was also a deliberate omission of the minority community angle to the violence and the manner in which the women of the Muslim community were targeted.⁷⁹ Prior to the publication of the report, one NCW member went on record stating that reports of rape in Gujarat were not “of that scale” and women were killed and burnt “on both sides”. In fact, the terms of reference of the Committee constituted to look into the matter had already mentioned that the committee would particularly focus on the adequacy and efficacy of relief and rehabilitation measures for women and children in the affected areas. Not surprisingly, then, the Commission’s report was mostly concerned with the relief and rehabilitation aspect and the need for civil society measures to instill confidence among women. The report was merely a bland account of observations by members of the Committee that did not analyse the issue in its political context.

In Delhi, women’s organizations, after writing a strongly worded letter on this NCW report, approached the Chairperson of the Commission to at least work towards getting its own recommendations on relief and rehabilitation implemented.⁸⁰ The women’s groups’ visit to Ahmedabad in May-June 2002 had already brought out the role of the state government and administration in ensuring that required help did not reach the victims with a view to teach them a lesson. It was found that the government was not running any relief camps. These were being run mainly by their communities. Officials of the Department of Women and Child Development in Ahmedabad clearly told members of a women’s group that the then government would never sanction any special schemes for the riot-affected people and the maximum that they could do was to use funds already sanctioned under the Integrated Child Development Scheme under various heads.⁸¹

As part of government measures to look into the complaints of the victims, they said that a Women's Cell had been established to look into the civil and criminal complaints of women. When the members of the group checked the functioning of the Cell, they found that it was situated in the Circuit House. Women, especially those in the camps, had no knowledge of this. The cell was set up for only four days and was open for only two hours. No one knew how to follow up their complaints after four days.⁸² After returning to Delhi, the women's groups again tried to get in touch with Poornima Advani, the then Chairperson of the Commission, but could not get an appointment.

This shows that instead of taking cognizance of the substantive issues at hand, the NCW was merely settling for immediate relief. In Gujarat, such an approach shifted the focus towards compensation and relief, ignoring issues of accountability. This overlooked the fact that without fixing liability, the victims can never regain their dignity and self-confidence to live a life like equal citizens. Thus, it is important for such institutions to draw a distinction between procedural and substantive justice when they set their goals. Unfortunately, even the goal of ensuring relief and rehabilitation that the NCW set for itself could not be achieved partly because the NCW did not take this up seriously.

The Gujarat violence also brought home the limitations of the present legal remedies as many reports pointed out that rape was not the only form of sexual assault and the 'incidents were not merely random, impulsive or isolated incidents. They were widespread and preplanned.' In addition, because of the complicity of state agencies that either actively supported or protected the assaulters, the existing legal remedies could not be effectively used and few women came up to file complaints. The two laws that could be used in the cases of sexual violence committed in Gujarat were Sections 375 and 376 for rape and Section 354 for 'outraging the modesty of a woman'. While the definition of rape included only assault in the form of penile penetration, all other forms of assault came under "outrage of modesty", that entailed a much milder punishment because the crime is understood to be less grave. The civil rights' groups, women's groups and concerned citizens' groups that came together after the Gujarat violence made concerted efforts to raise the issue of sexual violence in situations of mass violence and also took individual cases to court. They emphasized that the laws, criminal procedures and evidentiary requirements need to reflect a more nuanced understanding of the coerciveness of such circumstances in order to effectively investigate and prosecute crimes of sexual violence. Women's groups also took forward the debate on the issue of inadequacy of legal remedies in cases of sexual violence in non-conflict situations to a situation of mass violence where sexual violence is targeted and used as a core strategy to destroy the 'other'.⁸³

In the above context, with a need to foreground the issue of sexual violence in conflict situations and to develop a feminist critique of systems of justice and democratic governance and to build national and international solidarity in analysis and action, a collective feminist initiative, the International Initiative on Justice (IJ), came into being in December 2002 with the joint efforts of various women's groups across the country. The members of the IJ met with 181 women and 136 men that included victims as well as teachers, lawyers, artists, activists from community organizations, relief camps, women's groups, human rights groups, NGOs, legal aid cells and other such organizations working in Gujarat. After more than nine months of violence, this visit by members of IJ to various violence-affected areas of Gujarat brought out the inadequacy of existing processes – both legal and otherwise – in providing justice and redress to victims.

The response of the NCW to targeted sexual violence on women of the Muslim community in Gujarat in 2002 was clear evidence of the compromised position of the Commission that is directly related to its composition. There was denial on the part of the NCW to acknowledge sexual crimes against women of Muslim communities and a refusal to act on the demands of the women's groups. Women's groups almost unanimously felt that they were let down by the Commission in the case of Gujarat 2002.⁸⁴ While the National Human Rights Commission found the Gujarat government guilty of gross negligence and held the government directly accountable for its failure to prevent violence, the Chairperson of the NCW clearly stated that she did not want to say anything against the Chief Minister of the state. Most importantly, it did not even take cognisance of the reports of the National Human Rights Commission that came out as early as April and May 2002 addressing the obligations of the State according to Indian law in the wake of the carnage and destruction in Gujarat. The Commission chose to overlook a large number of independent findings by human rights groups, civil rights groups, women's groups and concerned citizens. The Gujarat carnage was a test of the autonomy of the Commission at a time when governments, both at the state level and the central level, belonged to the same political party and were united in defending violence against a particular community. The helplessness and disappointment of activists and concerned citizens arose from the fact that despite the existence of institutions and redressal mechanisms, they did not perform as they were intended to. It was also a glaring example of how institutions that are meant to be watchdog bodies that enhance the accountability of governments and bureaucracies end up in shielding them. Jammu & Kashmir and the North-East.

The use of sexual violence on women by security forces in highly militarized areas of Jammu & Kashmir and the North-Eastern part of the country presents a

case where the state laws grant immunity and, to a certain extent, legitimacy to such acts by security personnel. In Kashmir and the North-East region of the country, the implementation of the Armed Forces Special Powers Act, 1958 (AFSPA) has resulted in countless encounter deaths, extra judicial killings, disappearances, arbitrary arrests, rape and torture by the security forces for decades. The immunity granted to security and armed personnel under AFSPA has meant that they are not liable for any criminal act committed in the line of duty. The legitimisation/impunity for their acts comes on grounds of discharging their duty in the service of society and in the interests of national security. But the history of military occupation of these regions is replete with instances of abuse, uncalled for violence and large-scale human rights violations.⁸⁵ Most of the work to highlight these abuses in these regions has been done by human rights activists and women activists through fact-finding reports. In fact, this is a point of convergence for both human rights and women's rights movements that demand the repeal of AFSPA. After the custodial rape and killing of Thangjam Manorama Devi, a suspected insurgent, by the Assam Rifles in Imphal, Manipur in 2004, with the guilty being punished for 'breach of discipline' and 'indulging in misconduct' with a sentence of one year imprisonment, an extraordinary protest by 15 middle-aged women demonstrating naked in front of the gates of Kangla Fort of the 17 Assam Rifles in Imphal shouting "Indian Army Rape Us" brought public attention to the routine sexual violations of women in these areas. Women's groups from various parts of the country went to the North-East to find out the truth and bring pressure on the government to review AFSPA. The pressure resulted in the government instituting a Committee to review AFSPA. Though the government restricted its terms of reference to the North-East, the women's groups demanded that the Committee's mandate should include a review of the working of the law in J&K too in view of the similar situation in J&K. The groups made their presentation to the Committee on the basis of the reports that had documented the fact that rape, gang rape, mass rape, molestation and sexual harassment by security personnel had become routine in these areas.

While the women's groups and human rights groups have come together to demand the repeal of AFSPA, the Commission has mostly remained silent on the issue. And when it talked about it, for example, during the time of Poornima Advani when it was pressurised to send an investigation team following the rape of Manorama and the ensuing public outcry, it still called the demand for repeal of AFSPA a mere 'emotional outburst'. Though it accepted the killing of Manorama by the Assam rifles, it refused to accept that she was raped.

In the recent rape and murder of two women in Shopian in June 2009 by security forces, the NCW has not come out with any statement condemning

the act or demanding action. It is only because of the pressure by women and civil society groups in Kashmir and the heavy publicity given to the blatant denials and lapses on the part of the police and administration that some minimal action has been taken and a one-person enquiry commission has been constituted by the government to investigate the matter.

Both these cases are merely the tip of the iceberg of large-scale violations in these two regions, gruesome details of which are available in numerous findings by women and human rights groups on which practically no action has been taken. The Commission's silence on this gendered violence by the state agencies is a negation of the whole history of women's movements in these two regions where women have come together to organize themselves against these draconian laws. It is blatant tolerance of sexual crimes against women and the condoning of such crimes by the state. But most importantly, it signals that the institution is unwilling to take a stand against the government's (of whichever shade) official position on the issue. (e.g. the National Democratic Front under the leadership of the Bhartiya Janata Party (BJP) that has strongly supported draconian laws to tackle terrorism while the United Progressive Alliance of the Congress Party has been vacillating between withdrawing or promising to look at certain provisions of AFSPA) The Commission's composition being highly political, the Chairpersons and members have refrained from taking stands against governments in power, or asking for their accountability, or supporting movements that raise issues of the democratic rights of citizens.

Experience of intervening in individual cases

A core area of Commission's work has been to look into individual cases of violence against women, and the functioning of Complaints and Counseling Cell provides a window to understanding how violence in the lives of women is perceived and how the cases are handled. The first Annual Report of the Commission lists 246 complaints received from across the country. This number has increased manifold. At present, the NCW receives more than 5000 complaints per year. An analysis of the Annual Reports of the Commission and discussions with the counselors and members of the Commission point out that right from the beginning not much thought was given to how to handle the complaints coming to the Commission. The method mainly followed by the Commission has been to write to the concerned authorities that could/should act on the complaint.⁸⁶ No thought was given to the infrastructure or the kind of space required when women come to the Commission with their problems. The Commission did not seem to have much clarity about the kind of cases it would deal with,⁸⁷ who

would co-ordinate its work, or what skills, space and infrastructure were needed for this type of work. In fact, there were no counselors in the Commission from 1992-96. The direct involvement of the Chairperson, Member Secretary and members for all the cases coming to the Commission also could not be explained since these persons, because of their preoccupation with other issues, are not expected to have sufficient time to look into the details and follow up of all the complaints. In 1996-97, after adding a Counseling Cell to the Complaints Unit (CCC), four full-time and two part-time counselors were appointed. A full-time counselor is expected to deal with an average of four cases in a day. The introduction of Parivarik Mahila Lok Adalat in 1996-97 with a view to provide speedy justice to women who suffer on account of pending cases in courts also did not help much in view of the very large number of complaints coming to the Commission. The Commission has the power of a Civil Court that enables it to summon a person or examine the person on oath, requisition documents and receive evidence on affidavits. It can bring parties in a dispute face to face, and try to resolve the case through mediation. It can also instruct the appropriate agency to attend to the matter and report back to the NCW. These powers at times are able to help women as some counselors reported that the name of the NCW sometimes works. But in the absence of enforcement powers, the Commission has not been able to go far.

Despite the enormity of the task of attending to women's complaints, the CCC continues to remain marginal to the NCW. The higher levels of the Commission have shown little interest in the working of the Counseling Cell. It is located low in the hierarchy within the NCW, as is evident from its facilities, the service conditions of the counselors,⁸⁸ the interaction with the Chairperson and members, and the fact that its work is not seen as an input into the larger work of the Commission. In the words of a Counselor who is no longer working with the Commission, "the Counseling Cell is positioned very low in the hierarchy", while another one said that "it is nowhere in the hierarchy".

As a result, the work of the CCC has remained detached from the overall work of the Commission. There is also no methodical or detailed documentation of the complaints coming to the Cell. A large number of files were missing, while many were mixed with general administration files. There were no proper records to indicate the follow-up on the complaint or whether the complainant's grievance was redressed.⁸⁹ The counselors complain of the workload and pressure to perform in terms of number of cases they deal with, and little or no infrastructure facilities. Therefore, there is an emphasis on closing cases, since the number of cases that a counselor handles determines whether she will continue as a counselor in the Commission.

The functioning of the Complaints and the Counseling Cell of the NCW is thus affected by its immediate context, i.e., the set-up of the Commission, although there is also the larger societal context from where the complainants come and where the strongest patriarchal forces are at work.⁹⁰ The constant interaction and experience thus generated can be fruitfully used in many of the other functions of the Commission, more specifically in the area of law reform, but the Commission has failed to develop such mechanisms and, therefore, in its dealing with cases of violence, has not been able to make a dent at any level.⁹¹

In a rare and honest account, an active and two-term member of the Commission, Syeda Hameed, reveals how as a functionary of the highest body she was reduced to a position of helplessness because of the uncooperative and biased attitude of the police, judiciary and government departments in handling individual cases of violence and harassment. In her book, "They Hang: Twelve Women in my Portrait Gallery", she narrates her experiences as a member of the Commission in helping 12 women who were wronged and the powerlessness of the highest body in actually moving the administration, police, and judiciary to make them take appropriate action.⁹² She gives detailed accounts of how her reports on sexual abuse in the case of a 10-year-old being raped by her father, of a domestic help being raped by her employer in Paris, and the sexual harassment of women in a prestigious school by the Principal never saw the light of the day despite her desperate efforts. There is the highly disturbing case of 15-year-old Maimun, who was married to a man from the community to protect the 'honour' of the community, who was gang-raped by her husband and his friends and then slashed with a knife from neck to midriff and left to die. Maimun, who was later discovered by some people, was brought to the Commission. Syeda and other members decided to go to her village and sought the help of the police. But when they reached the village, they were surrounded by a huge mob that took away Maimun while the police did nothing. The team returned empty-handed without getting justice for the girl after handing her over to the community that had already victimized and violated her brutally. These cases revealed that the Commission has not been able to make any dent in the gender-biased structures that shield crimes against women. To quote Syeda Hameed, "The Commission was unable to achieve justice in these cases because its reports are not binding on anybody and its jurisdiction stops at its front door."

Conclusions

"The paradox that NWMs face is the following: NWMs are state institutions in the business of altering those very institutions. This requires working inside the state

but sometimes against the state. This means that NWM staff has to acquire a dual identity; they can't be just bureaucrats, they have to bring in the goals of women's movement that are outside the state and make them palatable within the state." (Nuket Kardam & Selma Acuner, "National Women's Machineries: Structures and Space" in Shirin M Rai ed. *Mainsteaming gender, democratizing the state? Institutional Mechanisms for the Advancement of Women*, Manchester University Press, Manchester and New York, 2003.

The above quote in certain ways sums up the issues raised in connection with the functioning of the NCW. The need for a national-level body to make effective interventions on the issues concerning women at the law and policy-making levels with a view to ensure government accountability was the *raison d'être* for the demand for a National Commission for Women. For women's groups it was to be a mechanism that would act "as a conduit between them and the state, to articulate a voice and opinion that is strongly pro-women around which mobilization of the larger lobbies and constituencies can take place outside the state space" and therefore had high expectations from it. The creation of the NCW, unlike many other such bodies, has been closely tied with the interventions of women's movements that tried to influence decisions relating to the powers and positions as well as the role envisaged for the institution. Though created by the state, the Commission would still remain outside the government and was expected to ensure that the state carries out its responsibility towards the poor, marginalized and deprived women, to ensure that the constitutional goal of equality is translated into practice and to ensure that women's perspectives and their lived experiences are incorporated in the policies of the government. Since the performance of these roles required the Commission to work as a monitoring and watchdog body over the executive and legislative wings of the government, it was essential that the Commission be an autonomous body.

The present picture of the NCW indicates that though the Commission was created with a lot of hope and expectations on the part of the women's movements, it has not lived up to these expectations. As the Commission stands today, though it needs both support and legitimacy for its work from the women's organizations, the fact is that it remains distanced from them. There is disappointment and frustration over the functioning of the Commission for a range of reasons – the NCW's response to various issues has been at variance with their feminist politics, the Commission has been ignored by the government on policy issues, the ad hoc manner in which women's groups have generally been involved in any consultative process and, most importantly, the commission has failed to assert its autonomy. Women's groups have repeatedly complained about the functioning of the Commission as well as its lack of experience and

perspective on women issues. In crimes relating to women, the emphasis has been on enhancing punishments. In some cases the Commission contradicts its own stand. There are also problems at the level of conceptualization. The mandate given to the NCW under the Act indicates that a proactive role was envisaged for it and the women's organisations had also envisioned a similar the role for the NCW. While it may not be an easy task, there is definitely scope and possibilities for the Commission to play a more important role. The relevance of any institution gets strengthened by bold initiatives that also reveal the potential of the body. But at no time was the Commission able to fulfill its mandate and effectively use the powers that have been given to it.

In the performance of its role as an autonomous institution it has been restricted by its institutional design. The manner of its composition has disabled it in developing into an autonomous body and has also affected the quality of its work. Lack of institutionalization in the procedures of appointment to the Commission has meant that competent and committed persons are less likely to be appointed, especially in a political environment where appointments to commissions/boards have been convenient spaces to absorb politicians and bureaucrats. This process has failed to ensure that selected persons are known for their work in the field. They are essentially government and political nominees. There is a tussle for power between the Department/Ministry of Women and Child Development and the NCW, in which the Department/Ministry has constantly tried to control the Commission, administratively and financially, thereby crucially impacting on its autonomy.

Thus, the problems relating to the functioning of the Commission cannot be de-linked from the structural problems that the Commission is saddled with. The highly politicized composition of the Commission makes it difficult for the members and Chairpersons to take on a pro-active role. To that extent it moves farther away from the movement and is unable to perform its role as an autonomous body that may at times require them to take a stand against the government that has appointed them. This has got reflected in the functioning of the Commission at various points of time, whether it relates to the Commission giving its approval to a proposed amendment denying maternity benefits to women under the government's population control agenda and then reversing its decision under pressure from the movement, or making sweeping recommendations on the Uniform Civil Code and not playing a proactive role in taking up the issue of women's rights in parental and matrimonial property, or keeping silent on the barbaric violence inflicted on Muslim women in Gujarat in 2002. The Commission's engagement with the state on issues of falling budgets in areas of health, education and welfare services is not visible either in its Annual Reports or in its other

actions. It is the women's groups who have been more vocal in doing this, whether it is gender analysis of the budget or the economic impact of state policies or critiquing government approaches on issues of violence on women or the reproductive rights of women.

Internally, too, the Commission has been unable to develop a system of work or a work culture. The composition of the Commission has been such that these members are also found to be wanting in their understanding and accountability towards women's issues. Most of the members are either ill-informed or uninformed about the issues concerning women. Many of them were seen as making the most of their selection as members/chairpersons of the Commission by way of taking the maximum benefits from the available facilities and perquisites. Collective functioning and collective vision are lacking. The day-to-day functioning of the Commission and the quality of Annual and other reports of the NCW bear testimony to this. Most of the reports, especially the Annual ones, are substandard in terms of their content, language, and editing errors because the work is not taken seriously. The reports are cut-and-paste jobs with minimal fresh input and analysis. Many times even the contents of a section do not match the title.

The Commission has not been able to develop institutional mechanisms to ensure continuity of work done by various Commissions. There is a very ad hoc manner of working. The reports generally do not mention the work done by the earlier Commission and the problems that it might have faced. There have generally been huge delays on the part of the government in responding to the recommendations of the Commission on various laws and policies concerning women. The normal pattern is to refer several of these recommendations to state governments as matters falling under 'state jurisdiction' and set aside many others as matters 'under consideration' with various ministries and departments. But there seems to be little effort on the part of the NCW to follow up with the governments on this. This is because the functioning of Commission has come to depend on the personality of the Chairperson and the institution per se is not powerful. Accordingly, there are high and low phases in the functioning of the Commission. But what initiatives are to be taken and how they are taken depends largely on the personal interests, understanding and political affiliation of the Chairperson. The Commission has created an image of itself as being an institution of the party in power. Its hoardings display the pictures of the Chairpersons along with those of the Prime Minister, Chief Minister and/or powerful politicians of the party in power. Thus, the Commission does not see itself as autonomous from the governments in power.

Looking at the institutional and political constraints within which the Commission works definitely puts a question mark on the intentions of the state in creating such an institution. The performance of the Commission reveals that it has failed to make any serious impact on government policy with a view to address the discriminations and disadvantages suffered by women; rather it has been ignored by the government on many policy matters, where decisions were first taken and the Commission was informed about them only later. Its recommendations have not been given due consideration by various departments and ministries of the government. The fact that there is no time limit for the government to respond to the recommendations sent to it by the Commission and also because the recommendations are not binding on the governments has reduced the NCW to a mere recommendatory body without ensuring the accountability of the government.

While it is true that the autonomy and effectiveness of the Commission are constrained by its composition/ appointments, it is also true that the Commission has not been able to assert whatever powers it has. In the words of an activist, "It should treat itself as a power centre, representing voice of people but here it seems to be deriving its power from the Department of Women and Child Development, one of the weakest departments of the government. It does not assert the mandate that it has got from the Parliament of India and act as a buffer between the state and the people." In fact, the manner in which the Commission has functioned has contributed to lowering its own status and has reduced it to a subordinate agency of the Department (now Ministry) of Women and Child Development.

At the same time, one cannot assess the success or failure of any institution isolated from the general crisis. Over time, there have been efforts to resolve the issues of accountability and non-performance of governments by establishing more and more Committees and Commissions. If the larger political context does not allow autonomous functioning of national machineries created to raise issues of governance and state accountability, how can the mere creation of institutions like the NCW ensure the betterment of those sections of society for which they are created? The issue of the will of the government assumes crucial importance here. Despite the fact the past three decades have witnessed a number of initiatives by various governments with regard to women's issues, the manner in which the issues have been addressed, as already pointed out, have mainly been symbolic gestures by the state and the state has failed to address the issues of reproduction and gender inequality in an effective manner. This is evident from inadequate reforms in law and in the existence of unequal family laws. This is also evident in the ideological underpinnings of government

programmes and policies that fail to address women's issues within them through gender lens. The creation of a weak Commission for women has to be seen in the same context. In fact, the Commission presents a glaring example of how institutions are rendered ineffective by their politicization.

None of this should imply that the commission is in no position to take any initiatives by way of making an impact on policy-making or in taking issues forward. In fact, many women's groups have tried to use the institution strategically to carry forward the agenda of women's movements. The presence of the NCW at many public hearings organised by various groups highlighting the issues of women construction workers, Mahila sarpanchs, women in prostitution, etc. have helped them to take their campaigns forward and to extract some minimal concessions from governments. The Commission gave good support to women's groups and activists of the Women Development Programme of Rajasthan in restoring the position of the Sathin (grassroots woman workers of the programme). The Commission, by siding with the women's organizations in not accepting the Population Commission's recommendation on disqualification of elected members of Panchayats, played an important role in checking the government in its population control designs at the expense of women. In the Bhanwari Devi rape case, its position was contrary to that of the state fact-finding commissions. The Commission also took up the issue of reservation of seats for women in Parliament and Legislative Assemblies in a big way. Various studies have been undertaken highlighting the issues of migrant women, Muslim women, women in prostitution, trafficking and child sex abuse, women in the unorganized sector, women prisoners and women of the North-East. There is a series of reports from 18 states titled "Situational Analysis of Women" and some reports on legal reform issues. Many of these reports raise important issues that need to be carried forward by the NCW. Many of these reports have been done by various NGOs and/or activists from various movements with a view to use the name of this apex body to further their demands from the government. The Commission has tried to review, investigate and examine government policy at different levels, though with limited success due to the lack of political will on the part of the government and political leaders. Finally, it has also tried to establish links with regional, state level and international bodies engaged in lobbying for the advancement of women. All these point to possibilities that the Commission can definitely use its position through its mechanisms of reporting and by taking a firm stand on issues to contribute to and guide debates at the level of society and policy makers on issues of social concerns.

(Endnotes)

¹ The common expression has been National Machinery for Women.

² When I use the term 'women's movements', it refers to all those women's groups/organizations engaged in the struggle against patriarchy and for equality and justice for women. It includes various streams within the women's movement excluding those belonging to right-wing ideology.

³ *Towards Equality*, Report of the Committee on the Status of Women in India, Department of Social Welfare, Ministry of Education and Social Welfare, Government of India, 1974, Chapter 2.

⁴ Refer to Vina Mazumdar, Kumud Sharma, Nirmala Buch, and C.P. Sujaya (2001). *Gender and Governance: A Country Paper*, Centre for Women's Development Studies, New Delhi.

⁵ Ajay Gudavarthy, "Introduction". In Ujjwal Kumar Singh (Ed.) *Human Rights and Peace: Ideas, Laws, Institutions and Movements*, South Asian Peace Studies Volume 4, Sage, New Delhi, 2009. pp.256-57.

⁶ The demand for a National Human Rights Commission (NHRC) is one such example.

⁷ op.cit., Vina Mazumdar et. al. 2001, pp.36-40.

⁸ Nirmala Banerjee (1998). 'Whatever happened to the dreams of modernity? The Nehruvian era and women's position', *Economic and Political Weekly*, 33, 17, April 25.

⁹ op.cit., Vina Mazumdar et al., p.41.

¹⁰ The CSWI Report had termed these as "agencies for co-ordination, communication and implementation of measures to improve the status of women", while recommending that statutory, autonomous commissions be set up at the central and state levels. *Towards Equality Report*, op.cit.,Chapter 9.

¹¹ For a more detailed discussion refer to Keynote Address by C.P.Sujaya on "National Mechanism and Process towards a Plan of Action for the National Policy for the Empowerment of Women" at the Round Table Discussion on Women Empowerment Policy, 2001, organised by The Women Development Cell, Mumbai University and Maharashtra State Commission for Women, 28-29th November 2003.

¹² Radha Kumar, *The History of Doing: An Illustrated Account of Movements of Women's Rights and Feminism in India, 1890-1990*, Kali for Women, New Delhi,

1993, pp.96-142; Nandita Gandhi and Nandita Shah, *The Issues at Stake, -Theory and Practice of the Contemporary Women's Movement in India*, Kali for Women, New Delhi; 'Conferences of the Women's Movements- History and Perspectives' in *Saheli Newsletter* January 2000; and CWDS Report on Gender and Governance, op.cit.

¹³ *Report of the National Commission for Self-Employed Women and Women in the Informal Sector* 1988, Government of India, India, popularly known as the Shramshakti Report.

¹⁴ Reports of Patna, Calicut and Tirupati Conferences of Women's Movements. For example, the involvement of many women activists in the government-funded women's programme known as Women Development Programme and the subsequent attempts by the government to control the programme and use it to carry forward its own agenda, which was not necessarily pro-women, led to the questioning of such participation as also the intention of the state in creating such mechanisms.

¹⁵ The imposition of internal emergency in 1975 slowed down the process of follow-up action of the CSWI report. In 1981, the Joint Committee of Parliament to review rape and dowry laws recommended the setting up of Commissions for Women both at the centre and state levels. No steps were, however, taken to implement this recommendation. See General Recommendations of the Report of the Joint Committee of the Houses of Parliament to examine the working of the Dowry Prohibition Act, 1961, p.341, dated 10th August, 1982. In my interview with C P Sujaya, who had worked with the DWCD as Secretary, she mentioned that there was strong resistance to the proposal both in political and bureaucratic circles.

¹⁶ A reading of the Preface to *National Specialised Agencies and Women's Equality: Law Commission of India*, by Lotika Sarkar, CWDS, 1988 provides a good background and analysis of the changes that took place during this period, marking a shift from value-oriented social philosophy to the management-oriented approach of similar agencies created to intervene in the process of social change. She argues that this change affected their performance and capacity to intervene.

¹⁷ This emerged in the meetings of a joint forum of women's organizations created in the early 1990s known as 'Women and Politics'. The author had been part of these meetings that were held once in a month to discuss various issues in the engagement of women's movements with the state. The records of these meetings are not easily available. Also personal conversation with Dr.Vina Mazumdar.

¹⁸ *National Perspective Plan for Women, 1988-2000 A.D.*, Department of Women and Child Development, Ministry of Human Resource Development, Government of India, 1988, p.196. The Plan proposed that 'a special division be created in the Department of Women and Child Development for the enforcement of law for women under the charge of the Commissioner who will liaise with various special cells for women created by the police, the CBI as well as the Department of Public Grievances at the Centre and the state levels as well as also the Women's cell in Home Ministry'.

¹⁹ "Why the National Commission for Women". A small booklet brought out by seven National Women's Organizations. Undated

²⁰ Refer to *Draft National Perspective Plan 1988-2000: A Perspective from Women's Movement*

²¹ F. No.9-3/90-ww, Government of India, Ministry of Human Resource Development, Department of Women and Child Development, Government of India. Source NFIW files.

²² 'National Commission Bill Disappoints Women', in *The Hindu*, 12.06.1990 and 'Watchdog or Appendage", by Lotika Sarkar and Vina Mazumdar, *Indian Express*, 10.07.1990.

²³ The post-1989 period is characterized by the decline of Congress Party dominance and emergence of coalition governments combined with increasing electoral participation rates among women, rural voters, uneducated workers and lower castes that created a situation where vote banks became even more important for political parties. In the 1989 general elections, no political party could get a clear majority to form a government at the centre. This led to various alignments to form a coalition government. The period of less than two years saw the fall of two coalition governments. A caretaker government was sworn in and general elections were announced in March 1991.

²⁴ See Memorandum to the Prime Minister dated October 1991 by seven National Women's Organisations, NFIW files, and an undated booklet titled "Why the National Commission for Women", op. cit.

²⁵ Resolution dated 20th November 1991 by the National Convention of Women's Organisations, NFIW, files, and Lok Sabha Debates, 22nd November 1991.

²⁶ On the basis of interviews with women activists from various women's organizations.

²⁷ In the case of the NHRC, the Chairperson is one who has been the Chief Justice of India. One member has to be a judge of the Supreme Court and one the Chief Justice of a High Court. The other two members should have knowledge of or practical experience in human rights.

²⁸ An undated note titled "A Note from Seven Sisters" from AIDWA files.

²⁹ This came out in many interviews with women activists and bureaucrats. One civil servant commented that the Commissions have become parking lots for politicians.

³⁰ See Letter to the Chairperson of the Commission dated 15th February 1994. (AIDWA files).

³¹ National Commission for Women, A Decade of Endeavour :1990-2000, p.17.

³² Interviews with Brinda Karat, AIDWA. and Ranjana Kumari, CDS.

³³ Interviews with members of the NCW and government officials who worked with the NCW

³⁴ In the very first meeting that was called by the Commission to hold national -level consultations, the women's organisations asked the Commission to push for the recognition of the status of Chairperson and members of the NCW at par with those of the Commission of Scheduled Castes and Scheduled Tribes as promised by the government in a National Consultation with Women's Organizations in July 1990. Memorandum from the National Women's Organisations to the National Commission On Women, 28th April 1992, AIDWA files.

³⁵ Annual Reports, National Commission for Women. This also came out strongly in the interviews with the Chairpersons of the NCW.

³⁶ Mohini Giri recounted that on the issues of Sathins (grass root workers under the Women Development Programme, Rajasthan), a report was brought out by the Commission in collaboration with many women's groups. The Member Secretary refused to sign the cheque for the expenses incurred.

³⁷ The note has been referred to in a letter dated 30th March 1998, written to the Chairperson and Members of the NCW by Lotika Sarkar and Brinda Karat. AIDWA files.

³⁸According to Section 5 of the NCW Act, the government shall provide the Commission with such officers and employees as may be necessary for the efficient performance of functions of the Commission. In 1992, when the

Commission was first constituted, it was provided with a staff of 28 in various categories.

³⁹ Annual Report, NCW, 1994-95 pp.2-3, 1995-96 pp.2-3

⁴⁰ Annual Report, NCW, 1996-97, pp. 1-2.

⁴¹ Refer to the letter to the Chairperson and Members of the Commission dated th May 1999 by the women's organizations and the response of the members of the Commission dated 26 May, 1999. Source: AIDWA files.

⁴² *Functioning of National and State Commissions for Women*. Report of the Committee on Empowerment of Women 2001-2002, Ministry of Human Resource Development, (Department of Women and Child Development) Lok Sabha Secretariat, New Delhi, pp.34-35

⁴³ Letter dated 15th June 1999 to Brinda Karat, AIDWA, with a note attached as reply dated 26.5.99 See also the letter dated 25th June 1999 by Dr. Vina Mazumdar, CWDS files.

⁴⁴ The order said that "the financial powers may be exercised by the Commission as per Delegation of Financial Power Rules, 1978 for administrative expenses and establishment expenses like salary, traveling allowance, office expenses etc." It further stated that "Expenditure on grants to outside organizations/ individuals, workshops, seminars etc., should be incurred in consultation with the Department and Integrated Financial Division (of the Dept). Existing and new schemes/projects being run by the NCW may also be renewed in consultation with Department and IFD."

⁴⁵ This was clearly against the spirit of Section II, Clause (2) of the NCW Act which states that "The Commission may spend such sums as it thinks fit for performing the functions under this Act and such sums will be treated as expenditures payable out of the grants referred to it in sub-section (1)." The Act does not mention any consultation with any government department either on grants to organizations or individuals or to projects or schemes run by the NCW.

⁴⁶ Refer to Office Memorandum, No.9-10/2002-WW, Government of India, Department of Women and Child Development, dated September 20, 2002. Brinda Karat 'Changed Commission-The National Omission of Women' in The Hindu, November 13, 2002 and 'Government usurps NCW's rights' in The Times of India, November 9, 2002.

⁴⁷ Conversation with Reva Nayyar, then Member Secretary in the NCW and Sarla Gopalan

⁴⁸ Refer to letters dated November 5, 2002 by All India Democratic Women's Association to the Chairperson and members of the Commission and to the Secretary, Ministry of Human Resource Development.

⁴⁹In a letter written to various women's organizations, the then Chairperson of the Commission clarified that since the funding for the NCW comes from Plan grants, which is not the case with other Commissions (in their case the grant comes from non-plan grants), there is a different set of financial control procedures and since the NCW is not a grant-giving body but outsources funds to give financial to other agencies and defrays their expenditure from its grants, the Commission will continue to function without hindrance. Letter dated November 18, 2002, D.C. NO. 152/CP/NCW-2002/27.

⁵⁰ Letter dated May 5, 1999 to the NCW by seven National Women's organisations, NFIW files.

⁵¹ See Annual Report 2000-2001, National Commission for Women, pp.175-192 and A Decade of Endeavour 1990-2001, Volume II, pp.117-134.

⁵² Ibid. Annual Report 2000-2001, pp.184-85.

⁵³ As to the Action Taken Reports submitted to the government, the Commission has reportedly received Action Taken Reports only for the years 1992-93 to 1996-97. The Commission was yet to receive the ATRs for 1997-98 to 1999-2000 when I visited it in 2007. Since then the Commission has refused to say anything about the Action Taken Reports. The 2000-2001, 2001-2002, 2002-2003 and 2003-2004 Reports have been placed in Parliament since then. The Action Taken Reports for the same are still not available.

⁵⁴ *The Decade of Endeavour (1990-2001) Volume II* brought out by the Commission reports that the Commission has made more than 700 recommendations to the government.

⁵⁵ See Annual Reports, 1996-96, 1996-97 and 1997-98. Also from a personal conversation with Mohini Giri.

⁵⁶ National Commission for Women, Annual Report 1999-2000. See the Preface.

⁵⁷Letter dated 24th June 2002 by Dr. Poornima Advani to Dr. Vina Majumdar outlining the new directions for the Commission for the coming years. CWDS files.

⁵⁸ Refer to letters dated 23rd March 1993, 15th February 1994, 17th March 1999,

th May 1999 to the Chairperson of the Commission by women's organisations (AIDWA and NFIW files). A number of letters were written to the Commission in the process of consultations on the Bill on Sexual Harassment at the Workplace (Saheli files). Also on the basis of interviews with activists of various women's organizations.

⁵⁹ Annual Report 1993-94 p .6 and Annual Report 1994-95, p.6..

⁶⁰ Annual Report 1995-96, National Commission for Women, p.4.

⁶¹ Annual Report 1998-99, p.72.

⁶² See for details "Update on Domestic Violence Bill" in *Saheli Newsletter*, May-August 2002, pp.29-31 and "*Campaign for Civil Law on Domestic Violence, 2002, Update and Briefing*", a booklet brought out by Lawyers Collective, Women's Rights Initiative.

⁶³ See *Rashtra Mahila*, NCW Newsletter April 2002.

⁶⁴ Annual Report, NCW, 2000-2001, Annexure IV, p. 206.

⁶⁵ "*Creating a Window to Redress Women's Grievances*" *Research and Documentation Project on Mediation, Counselling and Conflict Resolution*, A Report, compiled by Saraswati Haider, Project Officer, (henceforth referred to as the PRAJA Report) See p. 25.

⁶⁶ *Sexual Harassment at Workplace*, 2001, National Commission for Women.

⁶⁷ See *Saheli Newsletter*, January-April 2002, Bill on Sexual Harassment at Workplace: Yet another Paper Tiger, p.11-12.

⁶⁸ Letter dated April 3, 2003 by Women's Groups to the Commission. Source *Saheli* files.

⁶⁹ In one meeting with a women's group after a letter was sent to the Minister of Human Resource Development dated 23rd September 2004 raising their concerns about the NCW submitting the Sexual Harassment at the Workplace (Prevention and Redressal) Bill, 2004 without consulting the members of the Drafting Committee, one member of the Commission in her introductory note to the meeting talked of the Vishakha Judgment as the one delivered on the case of a girl named Vishakha, whereas Vishakha referred to an organization named Vishakha based in Jaipur that had taken the lead in filing a petition with the Supreme Court in a case of gang rape of Bhanwari, a Saathin (grassroots-level woman worker) working for a government programme for women's development.

⁷⁰ Refer to Kalpana Kannabiran & Ritu Menon *From Mathura to Manorma: Resisting Violence against Women in India*, Women Unlimited and International Centre for Ethnic Studies, New Delhi, 2007.

⁷¹ Annual Report, NCW, 1996-97, p.4.

⁷² Annual Report, NCW, 1998-99, p.9.

⁷³ For a detailed critique of the study, see a note prepared by Kumkum Roy dated 31 July 2000 (from NFIW files). Women's organisations asked the Commission to dissociate itself from the study. See the letter sent to the Chairperson of the Commission dated 20 July, 2000 by the National Federation of Indian Women.

⁷⁴ For details see 'Amendments to Rape Laws: Problems and Possibilities', *Saheli Newsletter*, January-April 2002, pp. 13-16.

⁷⁵ The Criminal Amendment Act, 2006 has incorporated a number of suggestions on a number of issues regarding defining 'consent' and 'sexual assault' that still remain to be addressed.

⁷⁶ *Threatened Existence: A Feminist Analysis of the Genocide of Gujarat*, International Initiative for Justice, December 2003, pp.33-45.

⁷⁷ Refer to *Saheli Newsletter*, May-August 2002 pp.17-18.

⁷⁸ Report of the Committee Constituted by the National Commission for Women to assess the Status and Situation of Women and Children in Gujarat in the Wake of Communal Disturbance, 22 April, 2002.

⁷⁹ Poornima Advani, who was then the Chairperson of the Commission, was quoted as having said, "I am not speaking against Modi". (Narender Modi was the Chief Minister of Gujarat when this genocide took place). Another member of the NCW fact-finding team said, "We had decided that Chief Minister Narender Modi was not our direct concern." Nafisa Ali, a member of the NCW and the fact-finding team, said, "Reports of sexual violence against women in Gujarat were highly exaggerated. Women from both the communities suffered violence".

⁸⁰ Meeting held on 17th May, 2002 at the NCW office with the Chairperson. Source: *Saheli* files.

⁸¹ See *Saheli Newsletter* May-August 2002, pp. 14-16.

⁸² See detailed reports of both visits in *Saheli Newsletter*, May-August 2002, pp.2-16.

⁸³ A meeting in Miranda House, Delhi, organized by Saheli and attended by women's groups from various parts of the country discussed how the existing legal remedies could be effectively used in the case when state agencies either actively support or protect the assaulters. It also raised the problems of the definition of rape within Sections 375 and 376 for rape and Section 354 for 'outraging the modesty of a woman' which do not address a range of violence that are sexual in nature but not covered in the legal definitions; this issue has been the basis for work on the Sexual Assault Bill since 1992. While the definition of rape included only assault in the form of penile penetration, all other forms of assault came under "outrage of modesty" that entailed a much milder punishment because the crime is understood to be much less grave.

⁸⁴ Interviews with members of various women's organizations.

⁸⁵ Kalpana Kannabiran and Ritu Menon *From Mathura to Manorma: Resisting Violence against Women in India*, Women Unlimited and International Centre for Ethnic Studies, New Delhi, 2007, pp 159-196, Paula Banerjee, Gendered face of Extraordinary Powers in North East India in Ujjwal Kumar Singh op.cit. pp. 130-145 and *Saheli Newsletters* May-August 2004, January-April 2005.

⁸⁶ Based on interviews with the counselors and from the PRAJA Report, pp.8-15.

⁸⁷ PRAJA Report, March 2002, p.28 and interview with an ex-counselor.

⁸⁸ The working conditions, poor payment to counselors and ad hoc decisions about their honorariums and service and treatment meted out to them by members and Chairpersons has adversely affected their work.

⁸⁹ For details see PRAJA Report, op.cit. pp. 33 - 79.

⁹⁰ In an interview with an ex-member of the NCW, she shared her frustrations over being rendered helpless despite being part of an apex body like the NCW, since the forces at the societal level are so powerful.

⁹¹ There is another debate as to what extent the Commission should be involving itself in taking up individual complaints of women and requires a separate discussion.. See also the letters dated 23 March, 1993 and 15 February 1994, to the Chairperson, National Commission for Women, by Women's Organisations. Source AIDWA files. And Annual Reports, NCW, 1995-96 and 2000-2001.

⁹² Syeda S. Hameed, *They Hang: Twelve Women in my Portrait Gallery*, Women Unlimited, New Delhi, 2006.