

THE NATIONAL COMMISSION FOR WOMEN: A STUDY IN PERFORMANCE

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In the last three decades, the women's movements have increasingly sought to influence state policy with a view to include women issues and perspectives and increase women's representation and participation. As a result of this activism and gradual transformation sparked by the women's movement, governments in various countries, especially in the third world took steps to reform existing laws, incorporated policy directives on women and development in the planning process and initiated women specific programmes and projects. Since the mid seventies, there has also been global debate to eliminate women's inequality through effective mechanisms that could implement the new commitment to women's equality and participation and monitor its results. In India, the establishment of Women's Welfare and Development Bureau and a National Plan of Action in 1976 followed the Report of the Committee on the Status of Women in India. The recommendations of the World Plan of Action for the International Women's Decade had also included the creation of such national agencies. As a result, cells, bureaus, departments or ministries to look after the interests of women started becoming a significant part of governmental structures in the late 1970s. The experience of women's groups with such and other state agencies have led to the debate as to whether or to what extent these new forms of organisations have been able to carry forward the feminist agenda of women's movements and also have been able to incorporate practices consistent with feminist values of broad participation in those arenas. If women still continue to be peripheral to the planning and the political process, it means that such machineries have not succeeded in the objective of mainstreaming or integrating women in development.

In India, too, as the national machinery evolved and as India was responding to the demands of women's movements and initiatives of UN, the debates within and outside the movement continued on as to what kind of mechanisms would yield best results. Overtime an assessment of mechanisms so created has mostly been negative, as it has come out from a critical examination of the nature of government response to questions of gender, structures, agencies and programmes, action plans and state policies and state initiatives that has been done with a view to understand whether there have been gaps in conceptualizing gender issues within governance, or there are problems at the implementation level or there are not enough spaces available to women to influence policy and processes for bringing required changes. The policy documents of the State have incorporated the rhetoric of gender progressive perspectives and the documents most freely use the vocabulary of 'empowerment', equity, development, justice, and rights of women, increasing the capabilities and participation of women etc. without any comparable change in the position of women in Indian society. And while there have been some efforts to amend laws with a view to make them gender just, the changes have not been requisite. At the policy making level too, improving women's rights in property and their access to other productive resources has not become a priority issue.

BACKGROUND TO SETTING UP OF THE NCW

Drawing both from liberal democratic and Marxist social traditions 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. But the Indian experience in institutional support for women's advancement has also to be seen along with the struggles of women that brought to forefront the issues of women in the context of development planning and state's constitutional commitment to equality and justice. In India, the emergence and/or change, modifications, renewal etc., in these structures and formations from time to time, has been influenced by

emerging concepts and approaches to women issues, both at the national and international levels. While women's movements¹ in India in the post 1970s addressed its demands to the State by questioning its policies and raising issues of accountability and responsibility, it is important to understand the nature of these structures, processes and circumstances under which they operated in order to comprehend as to what extent these structures were in accordance with the vision of the women's movements, to what extent they have been able to carry forward the political agenda of women's movements and the manner in which those occupying important positions in these structures understood and defined women's concerns, in other words to what extent they reflected the aspirations of women's groups/organizations, how do women's groups relate to such structures and what are the problem areas? These questions will be addressed with a view to provide a background to the establishment of the National Commission for Women.

The National Machinery for Women: Conceptualisation at the National and International Levels

By 1970s, as more and more evidence with regard to the subordinate status and position started coming in and women's issues were vociferously raised by women's movements all over the world, it was also emphasised that the state has to take the responsibility and lead in achieving the objective of gender equality by incorporating women's perspectives and concerns in its policies and structures. In 1971 on a request from United Nations to prepare a report on women's status, the Government of India (GOI) constituted a national level Committee to review the status of women in India since independence. The Department of Social Welfare was identified to do this. Phulrenu Guha, then minister-in-charge of Social Welfare who was given this responsibility insisted that such a study about women's status in Indian society should be considered a national imperative since, while reviews had been undertaken of the condition and status of Scheduled Castes and Backward Classes, there has not been a similar kind of study on women. She even proposed constitution of a Commission of Enquiry for the purpose.²

The Committee on the Status of Women in India, whose report coincided with the International Women's Year, compiled evidence of gender gaps in virtually every sector and highlighted the inequalities suffered by women in the spheres of employment, health and education and the failure of government to ensure the application of rights guaranteed by the Constitution to women. The Committee pointed out that the Indian State has failed in its constitutional responsibility of not discriminating on grounds of gender. On a stronger note it said that there seemed to be no acknowledgement of women's work and needs in all the major sectors of Indian economy. In fact women had been increasingly viewed by the planners as not being in need of an independent livelihood, to the point where women's decreasing work participation rate and share of employment increasing poverty and insecurity in sectors of the economy in which they used to dominate earlier (forestry, agriculture, livestock, cottage industry, sericulture, fisheries etc.) were not even viewed as problems requiring change.³

The report suggested that recasting the employment policy for women requires reexamination of existing theories regarding their suitability for different types of work and special efforts to promote equality of opportunity by giving due attention to disabilities and handicaps of women. This meant that any policy or action programme for the emancipation and development of women must have an integrated approach. The report pointed out that the processes of development had adversely impacted on women by leaving them out of 'both the discourse and

¹ When I use the term women's movements it refers to all those women's group/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.

² . Report on Gender and Governance, CWDS, p.47 and personal conversation with Dr. Vina Majumdar

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

practice'. The Committee recommended that the Government of India should have a National Policy on Women's Development to give adequate attention and provide a frame of reference for assessment of government and voluntary efforts. The report also suggested follow up mechanisms and processes, to be set up by the state to look into the issues raised in the report and to achieve the constitutional goals of equality and justice for women.

The operationalisation of the recommendations of the Committee on the Status of Women in India (CSWI) required new approaches and institutional support to translate intent into action. The Parliamentary debate on the CSWI Report concluded in a very wide mandate to the government "to remove all disabilities that Indian Women suffer from". What followed was the process of formation of National Machinery embedded within the larger structures of government.

At the same time, at the international level the UN led policy initiatives both in terms of requesting the countries to bring out status reports on women in various countries and following that asking them to create institutional mechanisms at the national and international levels to follow up the recommendations of these reports, led to the establishment of different kinds of structures within the governmental bureaucracy to look after women's interests as chalked out in the various policy documents of the government. The term that was used as these structures/mechanisms evolved with the objective of supporting and monitoring women's development was "National Machinery".⁴ At the international level three world conferences (1975 Mexico, 1980 Copenhagen, and 1985 Nairobi) gave further impetus to the setting up of institutional mechanisms at the national level, to promote the status of women.

Policy debates during the Women's Decade (1975-85) marked a shift in terms of viewing women as targets of social welfare measures to that of participants in the process of development. The argument was that women have remained only recipients of welfare, now they must be integrated in the development process. The approach was termed as Women in Development (WID) and later as Gender and Development (GAD). This integration was to be accomplished through education, training to women by providing them with sufficient employment opportunities in order to move into the market economy. In addition, strong and organized articulation by the women's groups against crimes and violence against women during this period raised the issue of asymmetric participation of women in the social-economic and political process. The belief that growth by itself would take care of the problems of poverty, inequality and unemployment was replaced by the theory of direct intervention for promoting measures to deal with the socio-economic forces that marginalize women.⁵ (add any other references from my book) The new slogan that emerged was that of 'gender mainstreaming' and an increased attention was given to the role and structure of national machinery to mainstream women issues in the policy-making and implementation process.

The period was thus, characterized by the institutionalization of women's interests in all areas and sectors of policy at all levels that had emerged as a major concern of women's movements worldwide and within the UN system and gender mainstreaming was viewed as a strategy for addressing this issue. The frequent emphasis on 'all' and on 'policies' was premised on the understanding that the state had to take the responsibility and lead in promoting gender equality so that gender perspective is reflected in all governmental policies and programmes, right from the designing to implementation, monitoring and evaluation so that inequality between women and men is not perpetuated.

⁴ As a concept, the term national machinery was defined in a paper prepared by the secretariat of the Centre for Women's Advancement located in Vienna. In this paper, the Secretariat says, "Two different concepts need to be distinguished - a national machinery and a national focal point. National machinery is a complex organised system of bodies often under different authorities but recognized by the government as the institutions responsible for issues relating to women". See "Institutional Mechanisms for Women's Development" Institute of Social Studies Trust, Women's Studies Resource Centre, 1995, New Delhi. P.

Since then the discussions at international forums and meetings have focused on the role and effectiveness of national machinery. It was to be 'the central policy coordinating unit inside government to support government wide mainstreaming of a gender-equality perspective in all policy areas'. Representing women's interest at different levels of governance was thus one of the important tasks of national machineries. In the UN itself, the first step was to have a cell or a Bureau. This Bureau found it easier to work with counterparts in different countries. In that sense, the national governments were to imitate the international model. This process led to the development of government structures and mechanisms to support the advancement of women in countries across the world. These structures came to be known as Institutional Mechanisms and more as National Machinery for the advancement of women. At the same time, the need for an apex body to press for women's interests to be represented in government policy and perform a watchdog function was also being emphasized in various ways. The UN Commission on Status of Women recommended the establishment of a National Commission to play a multiple role – of a catalyst, a watchdog, an evaluator as well as implementer. The World Plan of Action for the International Women's Decade included the creation of such national agencies.

Within India, an important recommendation of the CSWI was to frame a National Policy for Women in order to prevent any ambiguity as to what constitutes women's welfare, a recommendation that was not accepted and instead, a National Plan for Action for women was drawn up in 1976 to serve as a guideline both at the national and state levels. While the National Plan of Action (1976) used the term "machinery for implementation", the CSWI Report had not used the term 'machinery' but had called it "agencies for co-ordination, communication and implementation of measures to improve the status of women" while recommending the setting up of statutory, autonomous Commissions at the central and state levels.⁶

The critical outcome of the National Plan of Action was the 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 at the national level that will review the Plan of Action to be called "The National Committee on Women" with Prime Minister as the Chairperson and similar committees at the State level under the Chairmanship of the Chief Minister. The Women's Bureau was charged with the nodal responsibility of coordinating and collaborating with other central government ministries, initiating policies, programmes and measures, monitoring programmes for women's welfare, administration of legislative enactments and following up of the recommendations of the CSWI, the Nairobi Forward Looking strategies and other important reports and monitoring programmes for women. It was also to liaison with multilateral/UN agencies in the field of women's welfare. It functions under a Joint Secretary in the Department of Women and Child Development (DWCD) of the Ministry of Human Resource Development. But the suggestions for the setting up of similar machinery in the states as well as for resource allocation seemed half hearted without any details for operative frameworks. Later 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. Women were still linked with disadvantaged and handicapped groups. In the same year the pressure of the Nairobi closing decade conference in July 1985 and the awareness generated by it led to the creation of a separate Department of Women and Child Development. This was followed by a number of special structures for women such as Divisions (The 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) separate institutions for economic advancement of women (such as the Women's Development Corporations, Rashtriya Mahila Kosh) and finally the National and State Commissions both statutory and non-statutory.

⁶ CSWI Report, Chapter 9.

In addition, there were short-term committees, boards and commissions, some of which were predominantly non-official, though constituted by and retaining links with the State, may not technically seem to be part of national machinery as representing interests of women at different levels of governance. These were usually meant for specific tasks, like investigation into a particular aspect of the women's question (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 establishment) etc. The Committee for the Status of Women in India that brought out a comprehensive report on the status of Indian women was also set up on the initiative of the Indian Government. The National Commission on Self-Employed Women and Women in the Informal Sector was constituted by the Government to make a comprehensive study of the working and living conditions of poor women in the unorganized and informal sector of the Indian economy. All these have been an important part of mainstreaming and institutionalizing women concerns in public and political agenda.

The process of creation of national machinery points to a tendency of placing an implicit faith in the capacity of the highest formations of political power to be able to make a difference to women's status. The Government documents clearly indicate the tendency of creating top down structures with central government or the ministries as the nodal points. This is evident from the arrangement of the national machinery that is shown in terms of an ordered hierarchical power structure in various government documents. The Country Paper that the DWCD prepared for the Beijing Conference in 1995 shows national machinery "with its institutional support" diagrammatically as a series of concentric circles, with the DWCD at the centre and other government agencies and non-government agencies, commissions etc. arranged within the series of larger circles around the centre. Similarly, the DWCD brought out a report titled "Platform for Action- Five Years After - An Assessment" in 2000 in which it states, "The machinery for women's advancement is visualized as a set of structures and systems with the Department at the centre". Another way of representation of national machinery is a vertically ordered diagrammatic format, in which the nodal or focal point is right on top and other agencies arranged in descending formation, in order of their power and strength. The concept of the focal or nodal point for women is also tied in this thinking and approach to National Machinery. A nodal point becomes the point of reference for all questions relating to the theme or subject of women within the larger configuration of the government and state establishments. Implied in this approach is the sense of power, flowing from the centre to the periphery, from top to down. Also embedded in this thinking is an exclusive approach to defining National Machinery in terms of limiting the numbers and types of structures that go to make up National Machinery in accordance to their proximity to bureaucratic power.⁷

The creation of a National Committee headed by the Prime Minister can be seen in this light⁸. It met only twice and even its recommendation with regard to comprehensive child care system and reservation for women in Parliament are still to see the light of the day. The general perception that a high-powered committee or commission will be able to do away with the systemic problems only because of its proximity to power, continues. Not surprisingly, the evaluations of the national machineries across the world have focused more on the managerial

⁷ 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 Round Table Discussion on Women Empowerment Policy, 2001, organised by The Women Development Cell, Mumbai University and Maharashtra State Commission for Women, Government of Maharashtra, 28-29th November 2003.) From 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 Round Table Discussion on Women Empowerment Policy, 2001, organised by The Women Development Cell, Mumbai University and Maharashtra State Commission for Women, Government of Maharashtra, 28-29th November 2003.)

⁸ For details about the functioning of the Committee and follow up action, see *Gender and Governance – A Country Paper, India*, CWDS, New Delhi, 2001, pp63-67

aspects, like lack of adequate resources and staff, location, formal mandates, power and authority, legal roles and lack of knowledge and commitment among government officials and parliamentarians. The evaluations do not address the questions regarding the approach of the state to women's question, how the mere creation of such structures does not help in the absence of reorientation of the state from within, which requires revising the categories of family, household, production and reproduction and how it deals with the issue of gender equality and much more. How the location of the national machinery within the government has its own problems because of the nature of state as representing the interests of the powerful. The period following the declaration of Women's Decade in 1975 was characterized by an uneasy relationship between women's movements and the state. As we shall see later, this experience was clearly reflected in the discussions over the status composition and powers of the Commission that took place between the government and the women's organisations at the time of the creation of the NCW.

The Women's Movement in India

Before we discuss the issues that were raised as of critical importance on the structure and role of the Commission by the women's groups, it is important to take note and analyse this period from the point of view of the development of women's movement in India. The intervening period, i.e. from 1974 when the demand for a National Commission for Women was made for the first time to 1990 when the then government decided to constitute such a Commission, are of crucial importance as during this period, the spread of women's movement and emergence and proliferation of women's groups and organisations and women studies marked the Indian social and political scene.

In the period following the CSWI Report, the country witnessed a major preoccupation with women issues. The period was marked by a vibrant women's movement in India. The significance of their work lies in the fact that for the first time silence on various types of violence faced by women, both inside and out of their homes, was broken. Women were mobilized on a range of issues, and public and media attention generated and the state was also pressurized to move into action. Though initially the movement focused on the issue of violence against women in its various forms, the movement expanded to include hitherto unaddressed areas, like the question of relationship of religion and state and its impact on women, accountability of the state towards women, the conceptual links between women issues and economic development, the gender bias and discriminations in laws and legal system. The women's groups/coalitions that got formed during this period spent more energy on understanding the issues of women, in developing perspective and strategies to deal with the issues. The period saw the emergence of autonomous women's groups and women wings of political parties who focused their efforts to give support to women in various ways- through counseling, health education, legal advice, providing shelters etc. The period was also marked by production of feminist literature, audiovisual material and journals. Efforts were also made to get into hitherto unexplored areas and coordinate activities with other groups by forming joint fronts and action platforms. The period was marked by a process of political clarification and differentiation that took place within and between these groups, a process that was quite complex. The movement always remained self consciously non-cohesive and kept experimenting with different methods since it was not possible for women's groups to restrict to one issue. The period thus saw the growth of a range of women's groups, signifying different streams in the movement. There emerged women wings of political parties. There were autonomous women's groups. There was women's movement working in conjunction with mass organizations and movements. Even within the mass organizations there were organizations like Nari Mukti Samtha, Assam with an agitational and mobilization approach, taking up work-related and rape issues. There were trade unions like

SEWA that responded to the demands of its members and went into developmental and service programmes.⁹

Women's movement brought women issues on public agenda and set them in the political context by pulling them out from welfaristic mode. This is not to say that the debate on welfare vs development was never there in 1950s and sixties, only that it was not getting translated into state policies and actions. The movement asked for State accountability and put pressure on the State to include in its policy making process the issues and needs of women. The state was forced to look into the laws relating to violence against women. The work of these fifteen years was remarkable in the sense that from the welfaristic approach to women question, the issue of patriarchy was brought to the centre stage.¹⁰

While the movement succeeded in pressurizing the State to take a number of steps and reorient its perspective, the experience of women's movement with the state has always been a mixed one, characterized by a kind of relationship that has been both of cooperation and conflict. The years following the Women's Decade were also the years of experience with the kind of State response which was apparently pro women, but a close scrutiny of state policies revealed that in terms of its ideological assumptions and at the level of implementation, it was unable to address the issues of reproduction, women's work and sexuality. The period brought out a record of the state in dealing with gender concerns as mixed and ambivalent, a record of progression and retrogression as well as regional divergence. In terms of legal changes the record of the State during this period seems impressive, but in actuality it was largely ineffective and often obstructionist in the implementation of the legislation. The seemingly more enlightened state planning and policies that would take into account earlier omissions did not really help. Their inability to effectively address the issue of equality between women and men, the manner of approaching women's issues within them and gap in implementation raised doubts about the state's intentions to actually improve the status of women. The newer data and evidence also pointed to the repressive nature of the State not only in its response to struggles of the marginalized but in its day to day dealings with the people as it came out very strongly in the Report of the National Commission for Self-Employed women and Women in the Informal Sector, popularly known as Shramshakti Report. The government never seriously followed the recommendations of this report. And without waiting for the report of the Commission, in the same year the Department of Women and Child Development prepared National Perspective Plan (NPP), which among other things, recommended for the creation of an office of Commissioner for Women within the Department of Women and Child Development.

By the time the National Commission for Women was established, the movement was already entering another phase where the state response to women's question and issues related to governance were becoming the focus of its politics. The movement and women studies had developed so as to question/critique various centers of power, from family to the state structures from women's perspective. The information and data generated during this period pointed to the state as being the biggest violator of its own laws and human rights of the people. There were also limitations of working within the government with very little possibility of using the structures creatively as the debates with in the women's groups on to how to engage with the state, revealed. An important issue has been to improve representation of women, with a view to enhance the presence of women in state bodies. The other has been to engage with state structures as an appropriate means of bringing about a shift in state/public policies as also to influence the implementation machinery. It was felt that there was a need to make the state

⁹see 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, pp96-142. 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, and. Saheli Newsletter January 2000, Conferences of the Women's Movements- History and Perspectives,

¹⁰ This did not signify an end to welfaristic approach of the state in addressing women's issues.

structures sensitive to the needs of women. In 1980s, when these structures were created, a section of women's groups decided to be part of the programmes as well as the structures created for implementation, as a matter of strategy that could be effective in furthering the causes of women. In India, the involvement of many women activists in 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. While both the strategies of mobilising and articulating the interests of women within the space of civil society and an engagement with the policy-making machinery of the state are needed, the issue of form of participation and limits of government programmes and how women and women's groups should engage with the state structures became topics of heated debates in many women's movements conferences.¹¹

At the same time, the other kinds of changes that were taking place of which communalisation of society and politics and globalisation are the most visible developments- demanded a rethinking of the very terms in which women's issues were initially raised and the modes in which they are being reconstituted today. In addition to the above, the changing political context also included a decline in the quality and values of governance in terms of increasing bureaucratization, centralization of political power, political corruption and criminalisation of politics that very adversely impacted on the autonomous functioning of many institutions that earlier government functioning allowed and that the changed political context no more permitted.¹² Thus by the time the National Commission for Women came into existence the women's movement had moved far ahead in its understanding and analysis of women's issues and was also grappling with new strategies to address women's issues in a changing political and socio-economic context. The 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.

The National Commission for Women that was constituted in 1992 was to be different from earlier mechanisms, in the sense that while earlier machinery created by the State was part of the governmental machinery to look after the interests of women, to incorporate them in policy and law and work towards their implementation, the NCW was to be a monitoring and watchdog body, though created by the State, but to ensure that the state carries out its responsibility towards the poor, the marginalized and the deprived women, to ensure that the constitutional goal of equality is translated into practice and to ensure that women's perspective and their lived experiences are incorporated in the policies of the government. In this role it was expected to be an autonomous statutory body.

THE GENESIS OF THE NATIONAL COMMISSION FOR WOMEN

As mentioned earlier, the demand for setting up a National Commission for Women was raised for the first time by the Committee on the Status of Women in India in 1974, which brought out first exhaustive report on the status of women in India after independence. The report noted the absence of women's perspective in the overall development process and the indifference of policy-makers and planners was forcefully documented. In view of this it endorsed the recommendation given by the UN Commission on the Status of Women in its 25th report for a statutory and autonomous Commission "with a mandate to review, evaluate and recommend

¹¹ Reports of Patna, Calicut and Tirupati Conferences of Women's Movements

¹² A reading of the Preface by Vina Mazumdar 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 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.

measures and priorities to ensure equality between men and women in all sections of national life". The body perceived by the Committee right from the beginning was an autonomous, statutory body. Referring to the proposal for a Commission, the report says, "We have given careful consideration to this type at the State and National levels. We also believe that it is imperative for such commissions to have certain recommendatory and mandatory powers as well as statutory, autonomous status if they are to be effective in their functions."¹³ The Committee recommended the constitution of statutory, autonomous Commissions with a broad based and representative composition at the Centre and the States and suggested four functions that the Commission should perform. These included - (a) Collection of information on different matters e.g. education, employment, health, welfare, political participation, impact of social legislation etc., from the concerned agencies of the Government and to suggest improved methods of data collection, (b) evaluation of existing policies, programmes and laws that have a bearing on the status of women and to suggest amendments or improvements, (c) recommend to Parliament or to the State Legislature, new laws, policies, or programmes with a view to implementing the stated objectives and policies. The Government concerned should be responsible to consider such recommendations for action or to explain their non-acceptance within a stipulated period, (d) redress of grievances in cases of actual violation of existing laws.

The Committee recommended a broad based composition of the Commission; with one category being selected for their representative status, from different bodies engaged in problems affecting women in different sectors of society. For this purpose a panel of names could be invited from leading women's organizations, trade unions, legislative and legal bodies and employers from both public and private sectors and a selection made out of this panel. The second category would need to consist of experts from the fields of law, health, education, social research, planning and administration. It was suggested that majority of the members of the Commission should be women.¹⁴ It was also suggested that the Commission should be allowed to co-opt two members in case certain sectors remained unrepresented and needed to be given the power to appoint their Secretariat including the Secretary.

Though the report was placed before the Parliament and a unanimous resolution was adopted asking the government to take all necessary legislative and other measures to 'remove disabilities and disadvantages that Indian women continued to suffer from', no action was taken on establishing the Commissions for the next decade and a half. Meanwhile the governments did take certain policy measures and created certain mechanisms to look into the issues and concerns of women. The imposition of internal emergency in 1975 slowed down the process of a follow up action of the report. In 1981, Joint Committee of Parliament to review rape and dowry laws among other things recommended the setting up of a National Commission for Women with statutory powers both at the Centre and State levels.¹⁵ No steps were, however, taken to implement this recommendation by the then government.

In fact nothing much happened on this front for many years though the period did see some other initiatives like creation of Department of Women and Child Development under the Ministry of Human Resource Development, New Education Policy, a Chapter on Women and Development in the Sixth Plan. In 1987, the government appointed a National Commission on Self-Employed Women (NCSEW) with broad terms of reference to make a comprehensive study of the working conditions of women in the self-employed sector, which was later expanded to include "all unprotected women labour in the country and extend to women in the informal sector." The

¹³ CSWI Report, p.353

¹⁴ Two members of the Committee, Urmila Haksar and Sakina A. Hasan were not in favour of this decision

¹⁵ See General Recommendations of the Report of the Joint Committee of the Houses of Parliament to examine the question of the working of the Dowry Prohibition Act, 1961, p.341, dated 10th August, 1982

NCSEW recommended that a Labour Commissioner for women in the unorganized sector be appointed to look into the problems of women working in this sector.

In 1988, in the National Perspective Plan a proposal for Commissioner within the Department of Women and Child Development surfaced. The women's groups saw the creation of the position of a Commissioner for women's rights as negation of their long standing demand for the setting up of a national and autonomous commission for women. In their critique of the National Perspective Plan, they very clearly made their position clear.¹⁶ They pointed to the abysmal failure of the Commissioner for Scheduled Caste and Tribes to prevent atrocities against these groups and argued that 'even with the backing of a constitutional mandate there is little hope that one officer in the Department of Women and Child Development, with the glorified title of the Commissioner would be able to deal with the problems of women across the country.'¹⁷ The debates at this point of time revolved more around "Commission vs Commissioner", and while an Apex Body in the form of a Commissioner for Women's Rights was not acceptable, the demand for setting up of an autonomous National Commission for Women started gaining ground.

It was in 1990, that the Government of India decided to set up a National Commission for Women. In addition to national and international factors, discussed earlier there were also political factors that motivated the creation of the NCW at this point of time. Because of the successful politicization of women issues by the women's movements, it was no longer possible for the political parties to ignore women as a political constituency. While as a result of the women's movement women's issues became part of the public and political agenda of political parties, it was also a fact that the movement was also facing newer challenges, as the whole gender question seemed to become more and more complex. Though many of the issues were still the same, in the changed political context, the interventions demanded were of a different nature. Apprehensions on the effectivity of such a body amongst the various sections of women's movements need to be seen in this background.

As the government showed its eagerness to establish such a Commission and the women's groups started debating the nature and composition of this body, doubts about its efficacy in the changed political context and in view of experiences of other such bodies also surfaced. There were suggestions to seriously reconsider this demand. While it is within this context that the role and performance of the Commission needs to be examined, the issues and concerns that dominated the debates at the time of the constitution of the Commission are also to be understood in the same context.

Major issues of debate on the Composition and Powers of the NCW

The process of setting up the Commission reveals the concerns of women's groups for the creation of a body that is not only a statutory one but is autonomous in its functioning. A review of the process of setting up of the NCW indicates that right from the beginning three major issues dominated the debates within and outside the Parliament between the government and the women's organizations. These were: (i) status, (ii) composition and structure and (iii) functions and powers of the NCW. The consultative process that was started by the then government reveals that while the government was over anxious to pass the bill for the setting up of the Commission, the women's organisations were more concerned about the powers, functions and status of the Commission and its relationship with the government.

The government did start a process of consultation with the women's organisations by holding a Conference on the proposed setting up of the National Commission for Women on 5th February,

¹⁶ Refer Draft National Perspective Plan 1988-2000: A Perspective from Women's Movement

¹⁷ Refer to the blue book.

1990.¹⁸The Department of Women and Child Development circulated a note at this meeting with details of its proposals. The government note and the processes that followed indicated that there were substantial differences of perception on the status and role of the Commission on the part of women's organizations and the government. The government wanted to create the Commission by an executive order with no attribute of autonomy. With no judicial powers for the Commission, the Government proposal intended to reduce the Commission to a mere recommendatory body. The highly inadequate proposal got the women's groups into hectic deliberations and strategising, amongst themselves and with government so that the Commission for Women turns out to be body that is statutory, autonomous and with real powers. The seriousness with which the whole issue was taken up by the Women's organisations is evident from the fact that they held their own meetings as well as joint meetings to analyse and critique the initial government proposal and the subsequent hastily drafted Bill. The groups also wrote individually as well as collectively to the concerned Ministries and Departments to communicate their concerns and to ensure that the Commission is created as a statutory and autonomous body.

While this initiative of the Government was appreciated by the women's organisations so that to strengthen the consultative process, there were key areas of difference. During the course of consultations women's organisations made their objectives and demands regarding the status, functions, powers and composition of the NCW extremely clear to the Government. They categorically rejected the department's proposal to establish the Commission by an executive resolution and observed that unless it is a statutory body with autonomy and powers to take the government to task for its acts of omissions and commissions, the utility of the Commission would remain questionable. It was argued that this was also important so that the recommendations of the Commission have legal sanction. For the functions of the Commission, the representatives of the women's organisations and resource persons gave the following recommendations: (a) to study, review and investigate all matters relating to the safeguards provided for women under the constitution; (b) to review as and when necessary existing legislation affecting women and pursue with concerned ministries/state Governments/Union administrations for implementation of existing legislation and suggest amendments, if necessary, (c) looking into complaints and taking *suo moto* action, (d) to call for special studies, (e) to submit an Annual Report to the Government, which together with the Action taken on the recommendations and explaining the reasons for non acceptance of recommendation, if any may be laid before each House of Parliament within a stipulated time. It was also recommended that for the purposes of holding investigations, the commission should have the same status as a Commission of Inquiry under the Commission of Inquiries Act, 1952, as amended. The organisations also made it clear that it be made mandatory on the Government to involve the Commission in the policy formulation process through mandatory consultation on all major policy matters that would affect the socio economic development of women. The department's proposal had not mentioned it.

The issue of the executive powers of the Commission was also discussed. There was a unanimous opinion that the role of the Commission was not to execute government's policy or to run projects on its own. Further it was also agreed that as far as direct legal intervention was concerned, the Commission should not convert itself into a litigating body taking up individual cases, but should be using its discretion to take up cases, which have implications for large sections of women. It was visualized that overburdening the commission with many responsibilities would render it ineffective.

¹⁸ F. No.9-3/90-ww, Government of India, Ministry of Human Resource Development, Department of Women and Child Development, Government of India.

Regarding the composition of the proposed commission it was recommended that there should be a Chairperson, 3 to 5 members and a secretary. It was further agreed that as an autonomous body the Commission should evolve its own procedures of functioning and also take a decision in regard to the composition of its staff. As to the composition of the proposed commission, it was suggested that it should have leading experts as representatives from various groups, namely, central labour/trade unions, legislative and legal bodies, leading women's organisations and women activists. It was further recommended that there should be similar commissions at the state level and if possible at the district level also.

In May 1990, the Government brought a hastily drafted bill to constitute a National Commission for Women before the Parliament. Unfortunately, far from incorporating the suggestions made at the 5th February meeting, the draft reflected the earlier proposals made by the Department. The Bill was placed before the Parliament on 22nd May 1990 and the Government announced that it wanted to pass the Bill within a day because of its anxiety to avoid any further delay. Members cutting across all political parties were also in favour of passing the Bill though some of them raised their doubts over various provisions of the Bill and also gave recommendations to strengthen the Commission.

The women's groups did hectic lobbying both within and outside Parliament to ensure that the bill was not passed within a day overlooking the recommendations made by them. The reports of the meetings with the government, meetings of the women's organisations, the joint critique of the bill prepared by the women's organisations in a Convention organized in Delhi on 8th, July 1990 point to the sustained efforts made by the women's organisations to put pressure on the government to set up a body that is actually in a position to perform the 'watch-dog' function to monitor and ensure implementation and accountability of the Governments. The government agreed to postpone the discussion and have another round of consultation with representatives of women's movement. The government decided to hold the meeting for this purpose on the 28th July 1990. The women's organisations decided to have their meeting in 8th July to finalise a critique of the Bill and their proposals to be presented at the 28th July meeting.¹⁹

The critique prepared by the women's groups and activists was mainly a reiteration of the points raised by them in the 5th February meeting. It once again raised issues concerning the appointment, removal, status and powers of the Commission since these were to be crucial in the functioning of the Commission. The critique provided a clear position of the women's groups as to what they expected from such a Commission. At the same time the manner in which the Bill was framed and was sought to be pushed in the Parliament as well as the provisions of the Bill with regard to the powers and status of the Commission, stated the position of the government on the issue. The women's groups reluctantly agreed to the government's decision to constitute the Commission by an Act of the Parliament as an interim measure, despite their demand for the Commission to be a constitutional body.

The critique stated that the Bill gave the Commission only responsibilities and functions without adequate powers. It also pointed out an extremely objectionable feature of the Bill regarding the termination of service of any members of the commission including the Chairperson without giving any reasons and fresh nomination to the Commission by the Government. The critique also strongly objected to the rights given to the Central Government to direct Commission's activities. The organisations proposed (a) explicit clauses to protect the independence and autonomy of the Commission; (b) nomination of the members from the panels drawn up by the Chairperson in consultation with various persons/organisations in each category (i.e., women's organisations, trade unions, lawyers, academicians in women studies etc.) in the first instance and later from panels drawn up by the Commission as a body; (c) the Commission should report directly to the

¹⁹ '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.

President of India; (d) recommendations of the Commission should be followed by a memorandum of action taken by the government to be presented to the Parliament within six months; (e) involvement of the States to ensure communication with state governments and legislatures. The organisations 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.

The major recommendations made by the women's groups in their joint critique of the bill indicate that their vision of a National Commission for Women was of a body that would not only monitor the state policies that have ignored women specific needs and but in the context of the prevalent discrimination and violence against women at the level of family, community and society, also look at the sharp gender bias of existing legislation, an overloaded judicial system and insensitive police force, to become a workable forum for redressing these defects. The NCW was also viewed differently from earlier mechanisms, in the sense that while earlier machinery created by the State was part of the governmental setup to look after the interests of women, to incorporate them in policy and law and work towards their implementation, the NCW was to be a monitoring and watchdog body, though created by the State, but to ensure that the state carries out its responsibility towards the poor, the marginalized and the deprived women, to ensure that the constitutional goal of equality is translated into practice and to ensure that women's perspective and their lived experiences are incorporated in the policies of the government. In that sense it ought to be an autonomous body.

In view of the above critique, the Government redrafted the Bill incorporating some of the suggestions given by women's groups and presented to the Parliament on 10th August 1990. In the new Bill in addition to being a monitoring body, the Commission was vested with the power of civil court. The Commission was to decide its own procedures and was empowered to form sub committees of experts as it deemed fit. It was made mandatory on the government to consult the Commission on all major policy matters concerning women. The Government was obliged to give a memorandum of action taken on the recommendations of the Commission to Parliament with explanation for inaction. The Bill was finally passed on 30th August 1990.

Despite this positive response to the joint critique whereby some major recommendations of women's organisations were included in the final draft, some serious lacunae remained in the Act. 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, 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 would also determine its budgetary support. Even the powers given to the Commission to inquire, investigate and report on various issues did not go far enough. Though the powers of a Civil Court had been conferred but they were nowhere near the powers of a Court of Inquiry under the Court of Inquiries Act. These were quite serious shortcomings of the Act and were bound to affect the functioning of the Commission. The next chapter will look at the problems that remained at the level of the Act and how they were to impact on the functioning of the Commission.

Section III

COMPOSITION/STRUCTURE AND STATUS OF THE COMMISSION

After the passing of the National Commission on Women Act in August 1990, it took almost one and a half years for the central government to actually set up the Commission. The reasons lay in

the rapid political changes taking place at that time. The women's organizations too did not want the Commission to be constituted at that time as they apprehended that political factors may influence the composition of the Commission.²⁰ The apprehensions of the women's organisations were not ill founded and that became amply clear when the caretaker government in 1991 tried to finalise the panel for the First Commission just two weeks before the general elections were announced. It was only because of the immediate intervention by the women's organisations that no further action was taken on this. In the interim period several attempts were also made by the then government to block the setting up of such a 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 get the already passed Act implemented. 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.'²¹ It was also argued that it was obligatory on the government to set up the Commission as committed in the Parliament and once constituted the Commission can decide whether to create another office. Despite all these representations and arguments, the then government announced the setting up of two Commissions - one to protect the rights of women and the other to study women's status and problems. The women representatives in the Parliament and the women's organizations finally took the technical position that National Commission for Women Act, having been passed by the Parliament; it was incumbent on the Government to consult the Commission before taking many initiatives with regard to women like setting up of new Commissions or Commissioner for Women's rights.²²

The whole process of constituting the Commission clearly reflects the differences between the government and the women's organisations in their perspectives on the composition and role of the Women's Commission. The women's groups expected the Commission to play a more proactive role. They therefore, wanted the Commission not only to be strong body with adequate powers to perform the tasks assigned to it, but also an independent and autonomous body to perform watchdog role. Representatives of many women organisations pointed out that there was a constant attempt by the bureaucracy to keep the Commission weak in its structure and powers and under government control by retaining certain provisions in the Act itself that could be used to reduce its effectivity²³. At various points of discussions with the government the women's groups raised the issue that the fact that there were problems at the level of the Act constituting the Commission is bound to adversely affect the autonomy and functioning of the Commission. As the following details would make it clear, right from the inception of the NCW the procedure for the appointment of the Chairperson and members of the Commission and the issue of their status and powers, the powers of the Chairperson vis-à-vis the Member Secretary and Department of Women and Child Development have remained contentious issues and indicate a constant attempt on the part of the Ministry and the Department to keep the Commission subordinate to them. On the other hand, the manner of appointing the Chairperson and the members of the Commission had serious repercussions on the functioning of the Commission, more specifically in the discharge of its functions that required dealing with various ministries and departments and especially with the Department of Women and Child Development. All these issues will be discussed in the context of autonomous and effective functioning of the Commission.

²⁰ Details about the political context of 1990s.

²¹ See Memorandum to the Prime Minister dated October 1991 by Seven National Women's Organisations, and an undated booklet titled "Why the National Commission for Women, brought out by the same Women's Organisations

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

²³ Personal Interviews with many women activists of various women's organisations

Composition, Organisational Structure and Powers of the Commission

The Commission consists 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 (though it is not clear what an expert in organisational structure or sociological movement means) who is nominated by the Central government. According to the NCW Act, all orders and decisions of the Commission shall be authenticated by the Member Secretary or any other officer of the Commission duly authorized by the Member secretary in this behalf. The Commission is empowered to appoint such committees as may be necessary for dealing with such special issues as may be taken up by the Commission from time to time. The Commission has the power to co-opt as members of any such committee such number of persons as it thinks fit. These persons are not members of the Commission, but have the right to attend the meetings of the committee but do not have right to vote. The Commission has a Library and a Research Unit. The Commission also constituted a Complaints Unit to look into complaints of women. To this Unit a Counselling Cell was added in 1996.

Chapter III of Act enumerates the functions of the Commission. According to the Section 10(1) of the Act, the Commission shall perform all or any one of the following functions:

- investigate and examine all matters relating to safeguards provided for women under the Constitution and other laws
- present to the Central government, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;
- make in such reports recommendations for the effective implementation of those safeguards for improving the conditions of women by the Union or any State;
- review from time to time, the existing provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislations;
- take up the cases of violation of the provisions of the Constitution and other laws relating to women with the appropriate authorities;
- look into complaints and take *suo moto* notice of matters relating to deprivation of women's rights, non-implementation of laws enacted to provide protection to women and non-compliance of policy decisions; guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women;
- call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal;
- undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement, such as lack of access to housing and basic services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity;
- participate and advise on the planning process of socio-economic development of women;
- evaluate the progress of the development of women under the Union or any State;
- inspect or cause to be inspected a jail, remand home, women's institution or other place of custody where women are kept as prisoners or otherwise, and take up with the concerned authorities for remedial action, if found necessary;
 - fund litigation involving issues affecting a large body of women;
- make periodical reports to the Government on any matter pertaining to women and in particular various difficulties in which women toil;
 - any other matter which may be referred to it by the Central Government.

The listing of Commission's duties indicates that it has been assigned a very large range of responsibility that gives it a fair degree of autonomy as well as space for interpreting its field of

action. At the same time, combining the investigative, monitoring, evaluative, advisory, and remedial and awareness generation roles may also have the result of the Commission having a diffused focus, a point that will be discussed in the context of its role later.

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, ask for discovery or production of any document, public record and evidence on affidavits. It has power of issuing commissions for examination of witnesses and documents.

In its advisory role, the Commission is to participate and advise on the planning process of socio-economic development of women. The commission is empowered to undertake research and special studies or investigations into specific problems or situations arising out of discrimination and atrocities on women and recommend measures to deal with these. Through its annual and other reports it can make recommendations for the effective implementation of safeguards provided to women in the Constitution. It has a 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 can look into and take *suo moto* notice of matters relating to non-implementation of laws enacted to provide protection to women and non compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and 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. It also has the power to take up cases of violation of provisions of the Constitution and other laws relating to women with the appropriate authorities.

The Commission is expected to prepare an Annual Report and submit it to the Central Government. The Central Government shall cause the Annual Report together with a memorandum of action taken report on the recommendations of the Commission be laid before each House of Parliament or in case of non-compliance, the reasons for not accepting the recommendations.

Thus, as a watchdog body over the Executive, the Commission has been assigned a range of tasks. In order to fulfill these tasks the Commission has to function autonomous of both the executive and legislative wings of the government. In the actual performance of its role, to what extent the Commission has been able to function autonomously and influence the planning, policy and law making with regard to women is one aspect that will be examined in the following sections. At the same time, while looking at the problems regarding composition, autonomy and status of the Commission in the context of its functioning, an effort will be made to understand as to what extent they arise from its institutional design.

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, namely that these must be persons with ability, integrity and standing and those who have experience in law or legislation, trade unionism, management of an industry or organization committed to increasing the employment potential of women, women's voluntary

organizations (including women activists) administration, economic development, health, education or social welfare. It also provides that at least one member each shall be from amongst persons belonging to the Scheduled Castes and Scheduled Tribes respectively. The Act is however silent on the procedure for making such appointments. Various governments have time and again not accepted the demand of the women's groups 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 follow the same process as is done in the case of the National Human Rights Commission (NHRC).²⁴ There is no provision in the NCW Act to deal with the situation arising out of a vacancy and has caused problems when in 1995 and 1998 the NCW went without a Chairperson after their term expired. Members and staff felt harassed and desperately looked for any provision to get over this situation as they faced a very difficult situation, where their authority was not being acknowledged by senior officers of the secretariat.²⁵ Even in the case of appointment of the administrative staff, the NCW has remained subordinate to the Department of Women and Child Development for the requirements of staff, a point that has been discussed in the later part of the chapter.

With such a manner of appointment of the Chairperson and members of the Commission, political considerations were bound to play an important part in these appointments. As a result 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 issues. The total control of the government in the selection of the Chairperson and members of the Commission has affected the working/functioning of the Commission in many ways, whether it is the issues it chooses to work on or its manner of response to various issues or in dealing with the government and departments, both in its monitoring and recommendatory roles. It has also affected the day to day functioning of the Commission. The non-institutionalization of procedures for the appointment of the Chairperson and members of the Commission has increased the possibilities that competent and committed persons are less likely to get appointed as members and Chairperson of the Commission. This is also due to the fact that in a political environment characterized by unaccountability of political institutions, such autonomous bodies have become places to temporarily absorb politicians who may not have worked in the concerned fields.²⁶ The result is that they not only do not have enough experience and necessary expertise, in the absence of not having worked on issues through social movements or otherwise, they also lack the perspectives needed for processes of social change. Also the fact that 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, has resulted in distancing the Commission from women's organizations. While the commission has made efforts to involve women's groups in its work, the method has been ad hoc and halfhearted. There have been repeated complaints from the women's groups over the manner of calling meeting to discuss important issues when either the relevant papers were not available or the notices reach them only after the meetings had already taken place or the opinions of women's groups were not heeded to while sending recommendations to the government or such recommendations of government were accepted that go against the interests of women.²⁷

²⁴ In the NHRC, the Chairperson is one who has been the Chief Justice of India. One member has to be a judge of Supreme Court and one Chief Justice of a High Court. The other two members should be from amongst persons having knowledge of or practical experience in matters relating to human rights.

²⁵ An undated note titled "A Note for Seven Sisters" from AIDWA Files

²⁶ This came out in many interviews with women activists and bureaucrats. One civil servant commented that the Commissions have become parking lots for politicians.

²⁷ Refer to letters dated 23rd March 1993, 15th February 1994, 17th March 1999, 5th May 1999 to the Chairperson of the Commission by women's Organisations, (AIDWA and NFIW Files) A number of letters 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 the representatives of various women's organizations.

Such a manner of functioning is the direct result of the fact that persons occupying the positions of importance in the Commission are there not because of their work in the field but because of their political or other connections. They generally have no links with the movement and women's groups and therefore no deep concerns or understanding to carry the issues forward. At the same time the political nature of the appointments affects both the autonomous functioning of the Commission as well as the manner of approaching any issue because the Commission is constrained to go against those in power or those who have appointed them. Thus one finds the first Commission endorsing a retrograde amendment of the Maternity Benefit Act as part of the population policy of the Government of India. Though this support was later withdrawn by the Commission after women's groups made protests.²⁸ Interestingly, the recommendation resurfaced in a ten year stocktaking report of the NCW. The report titled 'A Decade of Endeavour -1990-2000' recommends that 'women employees having two living children will not be allowed to claim maternity benefit under the Act'²⁹. The response of the Commission on the barbaric violence unleashed on Muslim women in Gujarat in 2002 was the ultimate where the Commission openly seemed to be protecting the State Government that was deeply implicated in this violence. It is important to note here that same political party was in power at the central level and at the state level and the Commission came under a lot of criticism for trying to evade any criticism 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 has been a continuous process, whether it is the drafting of Population Policy or New Education Policy or preparing the Union Budget or preparing a Country Paper on Women or National Policy for Women. Unfortunately the Commission has also not been asserting its rights to be consulted. Also the fact that practically no action has been taken by the government on the recommendations of the Commission, (a detailed analysis on this will be done in Section 4) indicates that the governments have not been taking the Commission seriously.

The manner of appointment, therefore, becomes the first major stumbling block in the autonomous functioning of the Commission. And this was strongly pointed out by representatives of many women organizations who felt that they lost on this count right in the beginning. 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". At the same time, the manner of appointments has also impacted on its relations with the governmental machinery. The bureaucracy does not seem to take the Commission seriously, as the members and the Chairperson are seen to be ones handpicked by the ruling government.³⁰ The working of the Commission also indicates that it has become a Chairperson centred body and one finds that unless the Chairperson is able to assert herself and take certain initiatives, the Commission works like a dormant body.

Status and Powers of the Commission

The issue of the status and powers of the Chairperson and its members was a major issue of debate between the government and the women's organizations at the time of formation of the Commission and even after that. In order to understand the issue of status and powers of the Commission in the context of its autonomous and effective functioning, the following areas would be looked into in the context of the NCW Act as well as through the actual exercise of powers and assertion of its position viz. status of the Chairperson and Members, administrative powers and financial powers, relationship with the Member-Secretary and the Department of Women and Child Development, investigative role of the Commission and the status of its recommendations and impact on policymaking.

²⁸ See Letter to the Chairperson of the Commission dated 15th February 1994. (AIDWA Files)

²⁹ National Commission for Women, A Decade of Endeavour - 1990=2000, p.17

³⁰ Personal Interviews with the members of the NCW and government officials who worked with the NCW

Status of the Chairperson and Members

The issue of the status of the chairperson and members of the Commission is important because as part of the role envisaged in the NCW Act, the Commission is required to interact with government officials. Thus while a clear defining of the status of the Commission in the NCW Act definitely helps in its dealings at various official levels, the issue of status of the Commission also needs to be analysed from other different angles. The status is determined by the powers given to the Commission with regard to its role and functioning, that will also determine its relationship with and autonomy from the government. The manner of appointment and qualifications laid down for the members and Chairperson by the Act has also crucially impacted on the status of the Commission. In addition, the work done by the Commission and the manner in which it does that too has important bearing on its status. The argument in this chapter is that the status of the Commission is determined by all the above factors taken together. The Commission, constrained by its manner of composition/appointments has not been able to assert whatever powers have been granted to it and this gets reflected in the way it functions. As the following details would reveal the way the Commission has functioned has contributed to lowering its own status and has reduced itself to a subordinate agency of the Department of Women and Child Development.

The NCW Act

The NCW Act is silent on the status of the Commission despite an assurance by the government during the National Consultation convened by the Government in July 1990 that the status of the Chairperson of the NCW would be made equivalent to that of the Chairperson and members of the National Commission for Scheduled Castes and Tribes. After the constitution of the Commission, its initial meetings with the women's organisations and the representatives of the government, the issues that dominated the discussions related to the status of the Chairperson and members.

In the very first meeting that was called by the Chairperson of the Commission to hold national level consultation with women's organisations to identify the areas of legal reform and policy analysis, the women organisations submitted a memorandum to the Commission, that along with setting an agenda for the Commission raised the issue of the status of the Chairperson and members of the Commission, which they felt was crucial to ensuring the effectivity of the Commission. To quote, "... we would like to point out the critical importance of ensuring the effectivity of the Commission's power and status as an autonomous body. Throughout the process of consultation between women's organisations, members of Parliament and the Government during the passage of the National Commission Bill, we had emphasised the need for autonomy and status of the Chairperson and members of the Commission for its functions and powers. In the National Consultation convened by the Government in July 1990, an assurance was given to us that in such matters the status of the Chairperson and members of the Commission would be equivalent to those decreed for the Chairperson and Members of the National Commission for Scheduled Castes and Tribes. Since then the Government has recognized the status of the Chairperson of the National Commission of the Scheduled Castes and Tribes to be equivalent to that of Cabinet Minister. We would request the Commission to insist on similar recognition in the case of the Commission on Women."³¹

The Chairperson of the first Commission, who was also a cabinet minister of the then government, also wrote to the Prime Minister in this regard. Soon after, in the winter session of the Parliament on 1st December 1992, the subject was brought up, but without any results. The

³¹ Memorandum from the National Women's Organisations to the National Commission On Women, 28th April 1992, AIDWA Files

First Annual Report (that got prepared by 1995) of the Commission also reiterated that the delay in deciding the status of the Chairperson and Members of the Commission is a major constraint that has impeded efficient functioning of the Commission. It said, " The non-determination of status of the Chairperson and Members continues to pose serious problems for discharging the Commission's functions under the Act, particularly in interacting with governmental authorities as also when tours are undertaken in different states for investigation of crimes against women and other related issues".³²

There was no response from the government for about five years, when in December 1997, a letter from the Secretary, Department of Women and Child Development clarified 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'.³³ Incidentally, the order came at a time when there was no government at the centre and the order was only of ceremonial value. Any order on the status of the Chairperson and members of the Commission has to be by way of a government notification and this order was also effectively for determining the position for official government functions and had nothing to do with defining the position of the Commission vis-à-vis government officials. Even this order of the bureaucracy conveniently left the chairperson and the members in a position junior to the bureaucrats. The position remains the same till today and has consistently been pointed out by the women activists and the Chairpersons themselves as a weakness of the Commission.

The lower status accorded to the Commission has resulted in an anomalous relationship with the bureaucracy in its exercise of powers and functions assigned under the NCW Act. Section 10(4) of the NCW Act gives the Commission the power to function as a Civil Court. It has the authority to summon any person from any part of the country. Seen in conjunction with functions 10(1)(a) to (n) this means the Commission will be summoning Government officials including secretaries to the Government of India who are bound to obey the summons of the Commission as they would of a civil court. If the members of the Commission are put in the category of additional secretaries as mentioned in the Government letter dated 17th December 1997, an anomaly would arise in pursuit of the functions of the Commission, the members may have to summon secretaries to the Government of India, top ranking officers, police officials etc. while they themselves would be in the category of additional secretaries. Many Chairpersons pointed out that there have been many occasions when because of the undefined or perceived lower status of the commission they had a tough time in dealing with officials who were not cooperative and refused to recognise their position as an apex body on women's issues.³⁴

In view of the fact that the issues of autonomous functioning of the Commission are closely linked to the status of the Commission, women's organizations had a meeting with the Chairperson and members of the Commission on 17th March 1998 and decided to get the legal position vis a vis the government note. In a letter written to the Chairperson and members of the NCW to give their view of the legal position vis-à-vis the government, it was clearly pointed out that 'the demand for status of the Commission is not quibbling about positions of power or privilege but a critical question on the authority required to properly implement the mandate given to the Commission'.³⁵ The Commission in its Annual Reports has also repeatedly raised this issue with the government.

³² Annual Report, 1992-93, National Commission for Women, p.5. This also came out very strongly in the interviews with the Chairpersons of the NCW.

³³ The note has been referred in a letter dt.30th March 1998, written to the Chairperson and Members of the NCW by Lotika Sarkar and Brinda Karat. AIDWA Files

³⁴ Personal conversation with Chairpersons of the Commission

³⁵ Letter to the Chairperson of the NCW dated 30 March 1998 (AIDWA Files)

The 1994-95 Report recommended enhancement of powers of the Commission under section 10(4) of the NCW Act. In the 1995-96 Report, it was reported that the expert Committee on Law and Legislation constituted by the NCW has prepared a Draft Bill making appropriate amendments in the NCW Act for appointment of a Commissioner for Women's Rights, elaborating on the powers of the Commissioner and structure of the office of the Commissioner. Women's organizations have also time and again raised this issue.³⁶ The Government is still to respond to any of the recommendations of the NCW in this regard.

The Report of the Committee on Empowerment of Women 2001-2002 on the Functioning of the National and State Commissions for Women in its interaction with the women's groups also pointed to the need for determining the status of the Commission.³⁷ In my interviews with various chairpersons and members of the Commission, all expressed their concern on the issue of the status of the Commission vis a vis the bureaucracy. As the following details would indicate, in addition to the lower status accorded to the Chairperson and Members of the Commission, absolute dependence on the government for staff requirements, for financial grants, the position of the Member Secretary and the constant assertion by the Ministry and the DWCD to control the Commission have all had the effect of reducing an apex body like the NCW to a subordinate status to the bureaucracy.

Administrative and Financial Powers

Section 5 of the NCW Act lays down that 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. The first Annual Report of the Commission, which came out in 1995, brought attention to this. The report pointed out that, "the posts sanctioned for the Commission consisted mainly of personal staff, drivers, peons, etc. and the sanctioned posts of office staff included 2 lower division clerks, 2 assistants, 1 section officer, 1 Deputy secretary, and 1 Pay and Accounts Officer." Of these, the Deputy Secretary joined the Commission by the end of December 1992 and the Assistants and Lower Division Clerks became available only after 1995. In order to discharge its functions as stated in Chapter III, section 10 of the Act, it is essential for the Commission to have officers/experts and staff possessing specialized knowledge on a variety of subjects including law, socio-economic issues etc. The Commission's proposals for creation of additional posts were under consideration of the Government at the end of the period under report, i.e., 1995.³⁸

Inadequate and lack of suitable staff to carry out the functions assigned to the Commission have been a constant complaint right from the inception of the Commission and has been consistently raised in the Annual Reports of the Commission. In the 1994-95 Annual Report it was reported that due to the inadequacy of the required officers and experts, possessing specialized knowledge of the various subjects such as law, custodial justice, socio-economic issues, problems of weaker sections, development planning and research etc., 'recruitment was therefore, made of retired Government servants and other duly qualified personnel on ad-hoc basis'.³⁹ The same thing was reiterated in the 1995-96 Report. With the increase in the activities of the Commission and to cope with the workload, 9 more posts were created in January 1997. These 37 posts that have been sanctioned relate mainly to house keeping and administration activities. For the

³⁶ Letter to the Chairperson and Members of the NCW dated May 5, 1999 by Women's Groups (AIDWA Files)

³⁷ *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, p.23.

³⁸ Annual Report, NCW, 1992-93, pp4-5

³⁹ Annual Report, NCW, 1994-95 pp2-3

specialized kind of work that is handled by the NCW like review of laws, analysis of governmental policies etc., the Commission has been asking for more posts.

The 1996-97 Annual Report states, "The Commission had only a meagre regular administration staff viz., one Pay and Accounts Officer, two section officers, three assistants and two Lower Division Clerks. For secretarial assistance to members, five senior Personal Assistants were also provided. But the requirements of the Commission with regard to personnel with specialized background/knowledge and experts in law, custodial justice, socio-economic issues, problems of weaker sections, social research, and development planning etc. were still not met. The then Chairperson of the Commission sorted this out in the absence of any decision by the Government by making appointments on ad-hoc basis to carry out the Commission's work."⁴⁰

This means that even after many years of its existence, the government did not take adequate steps to provide the Commission with sufficient staff to carry out its functions. This was clearly an ad-hoc manner of running a National Commission, a body though having the mandate to monitor the government, did not have the power to appoint its own staff and decide its terms and conditions. The requirements of staff were also being met by the personal initiatives of any Chairperson, if and when she was able to do so. Similarly, since these matters were not sorted out properly, the bureaucracy was also interfering by taking decisions on behalf of the Commission. There were also allegations and counter allegations on the appointments being made without any minimum criteria and merit and thus recruiting incapable people.⁴¹

This state of affairs led to a crises situation in the Commission in 1998 when the term of the then Chairperson came to end. As mentioned earlier the Chairperson had made a number of appointments on daily wages and ad-hoc basis. After the term of the Chairperson was over the services of consultants and other staff were terminated on the orders of the Secretary of the Ministry and the Department of Women and Child Development put a ban on further recruitment.⁴²

Many of those, whose services were terminated, took the matter to the court. The Commission had recruited nearly 104 persons over and above the sanctioned strength of 37. When the NCW tried to dispense with their services, they filed a writ petition in the Delhi High Court and 24 of them obtained a stay order against their retrenchment. The Commission therefore, had to retain them in service. They are in the grade of Lower Division Clerk, Steno, Driver and Peon.

The power to terminate the services of this staff was derived from the regulations/rules of procedure framed in 1995 by the then Advisor to the Commission, Shri B.K. Samaddar These regulations gave powers to the Member Secretary (a civil service nominee of the Central Government) which were never envisaged under the Act and were far reaching in their implications to negate the autonomous rights of the Commission and make it a body subordinate to the Ministry. Though these rules and regulations were protested by the then members of the Commission and a new set of rules were framed by a three member committee set up for this purpose, it was under the 1995 rules and regulations that the Secretary to the Ministry terminated the services of consultants, experts and support staff and put a ban on further recruitments. The government sources assert that the sanctions were cancelled because the Commission had not adhered to the rules and recruited more than the required numbers. The staff crunch that resulted because of this order not only affected the total work of the Commission but also forced the Commission to close down its 24-hour emergency help line for harassed women. One member of the Commission on anonymity said that once they decided to

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

⁴¹ On the basis of personal interviews with staff, counselors and members of the Commission,

⁴² Refer letter to the Chairperson and Members of the Commission dated 5th May 1999, by the Women's organizations and response of the members of the Commission dated 26 May, 1999, Source AIDWA Files

resign en masse, frustrated over the crunch of adequate staff and non-cooperative attitude of the Ministry as the period was also marked by the absence of any officiating Chairperson.

The repeated requests of the Commission to the Department of Women and Child Development (DWCD) for additional posts were adhered to in January-February 1999 and the requirements of the Commission are assessed by the Government's Staff Inspection Unit (SIU). Even after the SIU report containing its recommendations was submitted, only some of the posts recommended were sanctioned in October 2000 but no posts were filled even after this.

According to Empowerment Committee Report based on the report of the Department of Expenditure and the Action taken Reports on the 1998-99 and 1999-2000 Annual Reports of the Commission, 5 additional posts were sanctioned and the NCW was allowed to engage 4 full-time counselors at a consolidated monthly fee of Rs. 10,000/- as and when their services are required by it.⁴³ The Action taken Report on the 1998-99 Annual Report also mentioned, "the Expenditure Reforms Commission has, in the meanwhile recommended that the working of autonomous bodies under the control of various ministries/Departments should be taken up. In accordance with this recommendation, the working of the NCW is being reviewed. Creation of additional posts as per SIU recommendations will be taken up after the review of the working of NCW is completed."⁴⁴ The same thing was reiterated in the Action Taken Report on the 1999-2000 Annual Report of the Commission.

The 2000-2001 Annual Report, the latest that is available has again complained that 'the Commission continues to work with the constraint of staff, also for the 9th year.' It pointed out that the Commission has been forced to make some ad-hoc arrangements by availing the services of retired Government officials, etc., which was asked to be discontinued in 1998.⁴⁵ The report of the Committee on Empowerment of Women (2001-02) has also strongly recommended 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."⁴⁶ The position as it stands today, the process of review of NCW work is on and only after that is complete the creation of additional posts in NCW will be done.

Chairperson and Member Secretary-Two Centres of Power

Another issue that has affected the functioning of the Commission has been the relationship between the Chairperson and the Member Secretary. In the Commission they seem to have become two focal points of power. No other similar Commission has the position of a member secretary. They only have secretary to the commission. As per the NCW Act, the Member Secretary is nominated by the Central Government for a term of three years. She is to be an expert in management, organizational structure or sociological movement and an officer who is a member of a civil service of the Union or of an all-India service or holds a civil post under the Union with appropriate experience. While the Act does not specify the role of the Member Secretary, according to sub-clause (1) of Regulation 16 of the National Commission for Women (Rules of Procedure) Regulations adopted in 1995, framed by the then advisor to the Commission, B.K.Samaddar, the Member Secretary is the administrative Head of the Commission. Clause (c) of Regulation 16 also says that the Member Secretary is to, "supervise on the smooth functioning of the Commission, including the Secretariat, its officers and employees". The

⁴³ Action Taken Report on the Recommendations Contained in the Annual Report 1998-99 of the National Commission for Women pp1-2

⁴⁴ Action Taken Report on the Recommendations contained in the Annual Report 1998-99 of the National Commission for Women. pp 1-2.

⁴⁵ Annual Report 2000-2001 p.2

⁴⁶ Report of the Committee on Empowerment of Women, pp.34-35

Member Secretary is also to "oversee the receipt of grants from the Government under Section 11 of the Act and their disposal' under clause (d) of Regulation 16. Clause (h) of Regulation 16 gives the Member Secretary the right to examine all cases where it was necessary to invoke powers under Section 10(4) of the Act, which gives the Commission "all powers of a Civil Court trying a suit". In addition, the fact that the terminology used is member-secretary and not just secretary of the Commission brings her at par with other members of the Commission.

The powers given to the Member Secretary under the above mentioned rules created a situation of ambiguity in the exercise of powers and in taking decisions, between the Chairperson and the Member Secretary. Many of these matters pertained to financial expenditure, but there were equally instances of matters that were administrative and crucially related to the autonomy of the Commission.

The women's groups had raised this issue at the time of formation of the Commission also. Later, in an undated note a number of issues relating to the powers of the Member Secretary as enumerated in the National Commission for Women (Rules of Procedure) Regulations, 1995 were raised.⁴⁷ In this connection powers of the Member Secretary as administrative head of the Commission, the supervisory powers and the authority for disposal the grant and the right to "examine all cases where it has been felt necessary to invoke powers under section10 (4) of the Act", were specifically pointed as creating ambiguity. The note strongly pointed out that the National Commission for Women (Rules of Procedure) Regulations, 1995 sought to convert the Commission into a governmental organization headed by a government officer, making autonomy a myth rather than a reality. It was recommended that the interim procedures need be framed by all the five members of the Commission in the exercise of its powers under section 9, sub-clause 2 which authorizes the Commission to regulate its own procedures. It was pointed out that the fact that the meetings of the Commission are chaired by the Member Secretary in front of other members of the Commission not only affects the public image of the Commission but is also a manifestation of the steady and real erosion of the status of the Commission. Members generally felt that they are being subordinated to or ignored by the Member Secretary. In an earlier letter dated 17thMarch 1999 also women's organisations had raised their concerns about the manner in which the Ministers or their secretaries have been summoning the members of the Commission. They had sought clarification on the legal status of the Commission and in case there is any discrimination on this issue with other such Commissions, had also extended their support to any efforts to remove such discrimination. In an earlier letter dated 17thMarch 1999 also women's organisations had raised their concerns about the manner in which the Ministers or their secretaries have been summoning the members of the Commission. They had sought clarification on the legal status of the Commission and in case there is any discrimination on this issue with other such Commissions, had also extended their support to any efforts to remove such discrimination. After the major crises already referred to about the dismissal of consultants and other staff of the Commission after the departure of Ms. Mohini Giri, the then Chairperson, the members felt that they were not even consulted on the matter. Though after this crises in one of its meetings held on 16 April 1999 the Commission scrapped these 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.⁴⁸

⁴⁷ NFIW Files

⁴⁸ The Commission has the power to formulate Regulations (not rules) by a Commission's decision in exercise of the powers under Section 9 sub clause 2 that authorizes the Commission to regulate its own procedure. It can also request the Central Government to formulate the rules and to place the Rule before both the Houses of Parliament, to give them the stamp of statutory enactment. It is better to opt for the first option of interim procedures/regulations, after following the due procedure.

The other dimension of the crisis that emerged after the departure of Mohini Giri in 1998 was again due to the silence of the Act on the matter of officiating as Chairperson in case a vacancy occurs due to retirement or for some other reason. In 1998, after Mohini Giri left after completing her term as Chairperson of the Commission, for more than two months, there was no one to head the Commission. Tensions between the Member Secretary and the Members of the Commission marred the period, where the member secretary was not enforcing the revised rules and regulations prepared by the members of the Commission. The Member Secretary then proceeded on leave, after informing the Secretary, Department of Women and Child Development. Since no member of the Commission was appointed to officiate in Mohini Giri's place, a difficult situation arose for the members of the Commission where senior officers in the Government did not acknowledge their authority. Since the Act was silent in case such a situation arose, there was a lot of dissatisfaction amongst the members of the Commission who shared their concerns with women's organizations over a range of issues concerning and affecting the functioning of the Commission. Most importantly, they asked for an open debate on the issue of ministry intervention in the affairs of the Commission having wide ranging implications and in this regard a debate also on the expectations from the Commission.⁴⁹

While these issues were still pending for a discussion and decision, a major controversy blew over the financial powers of the Commission between the Chairperson and Member Secretary of the fourth NCW. In an "office memorandum" issued by the Department of Women and Child Development, Government of India dated 20th September 2002, under the signature of Joint Secretary, it was stated that the existing delegation of powers of the NCW stands amended with this Government order and this Office memorandum. Accordingly, '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, "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." In the name of enhancing the powers of the Chairperson for "office and establishment expenditure," the memorandum actually struck at the root of financial autonomy of the Commission by making it mandatory for the Commission to consult the department.

This was clearly against the spirit of the Section II, Clause (2) of the NCW Act which states, "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 of any consultation with any government department either on grants to organizations or individuals or to projects or schemes run by the NCW. The background to this office memorandum was clearly 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, but on the other resulted in DWCD acquiring greater control over the NCW's finances.

The problem pertains both to the ambiguity of the division of power between the Chairperson and the Member Secretary, and also from non formulation of clear procedural regulations in this regard as well as from the unwillingness of the government to make the Commission an independent and autonomous institution. This episode clearly indicates that the DWCD used the battle between the Chairperson and the Member secretary to dilute the autonomy and

⁴⁹ 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.

independence of the Commission.⁵⁰ The women's groups also agitated over the fact that the Commission did not protest this move of the Department which is not only ultra vires of the NCW Act but has also the effect of reducing the Commission into a department of the Government.⁵¹ In a clarification letter written to various women's organizations, the Chairperson of the then Commission clarified that since for some unaccountable reason 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. The letter also stated that this anomaly would be taken care of in the next budget. It further said that since the NCW is not a grant giving body but out sources funds to give financial assistance to certain activities to other agencies and defrays their expenditure from its grants, the Commission will continue to function without hindrance.⁵² There have also been many other instances where the assertion of power by the Member Secretary has caused problems in the functioning of the Commission. Two previous Chairpersons (Mohini Giri and Vibha Parthasarthy) had also complained that they had problems with the power of Member Secretary to sign every cheque. The version of Department /Ministry is that a lot of money is being spent without accountability so there is a need to restrain this.⁵³

The issue of autonomy of the Commission came up in a different manner in a recent tussle between the Chairperson and the Member Secretary over the release of a Survey Report. The release of this report was scheduled for some date 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 the Commission is an autonomous body did not prevail. At the level of bureaucracy the general perception about the NCW is that it is a government body rather than an autonomous body.

This perception gets reflected in the relationship between the Commission and the Ministry of Human Resource Development as represented by the Department of Women and Child Development. The Commission functions under Department of Women and Child Development. Its grants come through the Department and its Annual reports are placed in the 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 earlier details regarding the role of the Member Secretary vis a vis the Chairperson and members of the Commission as also from the dependence of the Commission for various things on the Department, the commission has not been able to assert its autonomous status. In their personal communication, the Chairpersons have expressed their displeasure over the intervention in and attempt to control the functioning of the Commission. This intervention ranges from routine matters like deciding as to whether the Department or the Commission would be representing on programmes concerning women to asking for staff requirements, to expenditures of the Commission to seeking clarifications about the status of the Commission. The Ministry itself is a body whose policies and actions are supposed to be monitored by the Commission. If the Commission approaches the Ministry to clarify the status of the Commission or to arbitrate in matters concerning the Commission, it has the effect of not only making the Commission subordinate to the Government but also inviting

⁵⁰ Refer Office Memorandum, No.9-10/2002-WW, Government of India, Department of Women and Child Development, dated. September 20, 2002. Karat, Brinda, '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.

⁵¹ Refer 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.

⁵² Letter addressed to Brinda Karat, dated November 18, 2002, D.C. NO. 152/CP/NCW-2002/27)

⁵³ Conversation with Reva Nayyar and Sarla Gopalan

Ministry intervention in the affairs of the Commission. Since the Commission is a statutory body, it is the Parliament that should decide the powers of the Commission and not the Ministry.⁵⁴

The process of constituting the Commission as well as the period following it points to a continuous involvement of women's organizations both on issues concerning the formation of such a body and later on issues relating to its functioning. Because of a history of strong women's movement, it was not possible for the government to ignore or totally brush aside the interventions made by women's groups on behalf of the movement. But as it came out to be, the government finally constituted a weak Commission, a body that has become an instrument to distribute political patronage and therefore is handicapped by manner of its composition. Interestingly, the picture that it presents is of a body caught in contradictions of different processes. It is a body constituted by the State to carry forward the agenda of women's movements at a time when the state itself is coming heavily on all social and political movements. It is supposed to represent the voices of masses of Indian women but its composition does not reflect the aspirations of these masses. This has resulted in distancing the Commission from women's groups, but at the same time, as the analysis in the next section will point out the Commission is under pressure to get its legitimacy from the movement and for that reason has to work with them. On the other hand the women's groups have been using the institution some times strategically for its purposes to put pressure for its demands despite its highly disappointing performance. The following section will look into these issues in the context of the working of the Commission in specific roles assigned to it by the Act.

Section 4

The Functioning of the Commission

The Commission carries out its functions at different levels. The annual reports and other reports prepared by the NCW from time to time, provide information about its work, manner of functioning, perspective, vision and the problems being faced by it. As per section 14 of the National Commission for Women Act 1990, the Annual Reports of the Commission are to be laid on the table of both the Houses of Parliament along with the Action Taken Report on the recommendations contained therein by the Department of Women and Child Development. Till date the Commission has submitted nine annual reports to Department of Women and Child Development; the last one pertains to the year 2001-2002. Mostly these reports have not been submitted to the Department in time. But equally, there have been delays in tabling the reports before both the Houses of Parliament. (See the Table for details from the Report of the Empowerment Committee) The explanation given for this delay is that in order to prepare the Action Taken Reports, the Department has to circulate the recommendations to the concerned Ministries /Departments of the Government and obtain their comments/Action Taken.⁵⁵ The Commission attributed the delay in preparation of reports to lack of qualified staff and other infra structural facilities.⁵⁶

As one goes through the various Annual Reports of the Commission, one finds that no institutional mechanisms seem to have been developed overtime to perform the functions assigned to the Commission. The Commission does not have a field staff, and mainly depends on

⁵⁴ Letter dated May 5, 1999 to the NCW by Seven National Women's organisations, NFIW Files See also the response of members of the NCW to this letter from AIDWA File Letter dated May 5, 1999 to the NCW by Seven National Women's organisations, NFIW Files See also the response of members of the NCW to this letter from AIDWA File

⁵⁵ *Functioning of National and State Commissions for Women*, Report of the Committee on Empowerment of Women (2001-2002), Lok Sabha Secretariat, New Delhi, April 2001.

⁵⁶ On the basis of personal conversation with Chairpersons and Members of NCW and the Report of the Empowerment Committee, 2001.

consultants and experts in various areas taken on temporary basis to work on a range of issues the commission is working on. Thus to carry out its monitoring and recommendatory function, the Commission sets up committees of Experts with members as chairpersons of these committees. These expert Committees work on subjects of Law and legislation, take up special studies on issues of concerning the socio-economic and political status of women in the country with a view to suggest policy recommendations to the Government in the field of law and policy. Among other measures to probe into the developmental problems, formulate recommendations and to understand issues and devise strategies, workshops, seminars/conferences are held. The members of the Commission also make field visits to various states to take stock of the on-going development activities concerning women and to monitor the social position and conditions of women in various ways. The NCW is to be consulted by the Government on all important policy issues concerning women.

An important area of Commission's work is to attend to the individual complaints of women or to take suo moto notice of cases of violence against women. The Commission started with a Complaints Unit, to which a Counseling Cell was added in 1995. In 1995-96, in view of the heavy backlog of complaints coming to the Commission, concept of Parivarik Mahila Lok Adalat was introduced to help provide speedy justice to women. A detailed analysis of Commission's work in this area will be done in the next section.

In addition the Commission has also been playing a role in awareness generation on issues concerning women. In the performance of this role, the commission has been networking with NGOs, political leaders, media, organizing nation wide awareness enhancement camps focusing on legal rights, doing college programmes, and holding workshops, seminars, conferences, public hearings, developing short films, posters and other material. It has also been launching campaigns like Anti-liquor campaign, Dahej-Mukti Abhiyan, Anti-trafficking campaign, Mangalam Project, etc. The Commission has been performing all the above-mentioned functions in various ways.

The Commission at Work

As has been mentioned earlier too, the NCW Act stipulates a wider area with regard to the functions and role of the Commission, wherein the Commission gets a lot of scope for interpreting its role as well as to make interventions at various levels. An analysis of the functioning of the four Commissions since 1992 indicates that each Commission had its own understanding as to areas it wanted to work on. The actual functioning of the Commission reveals that it has functioned as a Chairperson centred body. Accordingly, there have been different perceptions about the role of the Commission and the functioning and activities for the three-year term of each Commission reflect that perception. As a result, each Commission had different issues to focus on and to work on and often one finds that there is no continuity of work from one Commission to another.

The debates and deliberations that happened at the time of formation of the Commission between the women's organizations and the government on the role of the Commission give a good account of the perceptions of the women's organizations about the role of the Commission. A memorandum given to the Commission by women's organizations immediately after its constitution and later correspondence also provide a good idea of expectations of the women's movements from the Commission. Accordingly the Commission was viewed primarily as a monitoring and watchdog body over the government to look after the interests of women. In the performance of this role the Commission was required to review the manner in which the enforcement machinery and the laws relating to violence and crimes against women have functioned over the years and suggest reforms in these areas. Another crucial area where Commission was expected to play a significant role related to the analysis of the economic

policies of the government as they impact on the economic needs and rights of women and suggest necessary measures. Women's organizations have repeatedly been pointing out that it is mandatory on the part of the government to consult the Commission on all policy measures relating to women and that the Commission is not merely a recommendatory body. The women's groups while understanding the need to respond to the individual complaints of women did not see this as the major role of the Commission and wanted the Commission to intervene in matters having implications for larger sections of women.

The Chairperson's Commission

The functioning of the four Commissions has only partially adhered to these perceptions. In fact, the functioning of these Commissions reveals that each Commission had a different agenda to work on, while the manner of their functioning demonstrates a pattern that is similar to each. The first Commission was faced with the initial handicaps with regard to essential infrastructure and facilities and adequate office space. The Commission did identify review of legislations and evaluation of the progress of development of women and study of impact of economic reforms on women as its core areas of work and gave important recommendations with regard to public distribution system, but was unable to make any impact on the policy making process. The commission was ignored on many occasions when decisions pertaining to women were being taken by the government. For example, the Commission was not consulted on the draft of Agricultural Policy. The period was characterized by major changes in the direction of government's economic policies that were to affect women especially poor rural women adversely. The Commission was not consulted at any step on the fallout of these policies on women. Even during the preparations on the Beijing conference, it was the Ministry to the exclusion of the Commission that was working for the Country paper being prepared for the Conference. The fact that the Commission did not even protest this and did not try to assert its powers came in for criticism by the women's organizations. While it is true that the Commission was severely handicapped by shortage of staff, space and other infrastructure and found itself dependent on the Department of Women and Child Development for many things, it is also true that the Commission was not making use of the scope provided to it by the NCW Act. For example, the Commission did not send a team to areas affected by communal riots following the demolition of Babri masjid with a view to assess the impact on women. The Commission also came under severe criticism by the women's organizations on giving its approval to an amendment to the Maternity Benefits Act as part of the population control policy of the Government that had been opposed by the women's groups as being against the interests of women. As an apex body to look after the interests of women, the first Commission was unable to play the role of a watchdog and monitoring body on the government and the manner of its functioning distanced it from those active with the women's movements. All of its Annual Reports were prepared late and thus were placed in the Parliament only after its tenure was over, giving it no chance to follow up on its own recommendations.

The Chairperson of the second Commission tried to bring dynamism to the body and to make a public presence of it. The priority areas of work as identified by the then Chairperson were: speedy justice to women, generation of legal awareness, 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 'political empowerment of women' and organised workshops and seminars and also worked with women's groups on raising awareness on this issues⁵⁷. It worked with political parties, NGOs, media etc. to get the Bill on Reservation of seats in Parliament and Legislatures for women passed. With a view to provide speedy justice to women who came to the Commission for the redressal of their problems, a Counselling cell was added to the existing Complaints Unit and a new concept of Parivarik Mahila

⁵⁷ See Annual Reports, 1996-96, 1996-97 and 1997-98 . Also from a personal conversation with her.

Lok Adalat was introduced in view of the huge pendency of cases. It also set up a Helpline Control Room that could attend to the complaints of women beyond normal working hours of the Commission. The Commission also made visits to mental asylums and prisons and tried to bring public attention to pathetic conditions in which women were kept there. It took up the review of 39 laws concerning women, interestingly as part of the Common Minimum Programme of the government. The Commission time and again raised the issue of inadequate staff and also of the status and powers of the Commission. In comparison to other Commissions the second Commission seemed to be more responsive to the women's organizations and tried to have more interaction with them. Despite all this, the Commission was unable to have any impact on the policymaking process concerning women's interests both on account of the fact that the government was not making any effort to involve the Commission in the decision making on women and also because no action was being taken on the recommendations made by it. In my interview with the then Chairperson of the Commission, she expressed her deep frustration over the non-responsive attitude of the Government towards the recommendations made by the Commission.

The third Commission started its tenure with a lot of administrative problems, a clear reflection of the ongoing tussle between the Commission and the bureaucracy as represented by the Department of Women and Child Development. Right in the beginning the Commission was faced with the problem of withdrawal of a large number of staff that had been appointed by the earlier Chairperson on adhoc basis. The non-cooperative attitude of the government on this matter caused serious problems. The Chairperson also hinted at the issue of members of the Commission joining at various points of time, making it extremely difficult to work as a team. Though this definitely is not the only reason affecting Commission's work as a team.⁵⁸ A reading of the annual Reports of this period and the activities taken up indicate that the major focus of the Commission's work was on networking and organizing various kinds of workshops for awareness generation. The Commission visited a number of prisons and custodial institutions to study the conditions of women kept there. And though the Commission reviewed some laws, it maintained that there is no dearth of laws and programmes for women, the problem is only at the level of implementation. In the understanding of the Commission, raising consciousness, generating awareness and imparting information on women issues would ensure the development of women.⁵⁹ Accordingly, the recommendations of this Commission also continue to lay more emphasis on providing education, credit facilities and on increasing the skills of women.

For the chairperson of the Fourth Commission, the main raison d'etre of the Commission is to attend to the individual grievances of women and the Commission exists to redress women's grievances.⁶⁰ The Chairperson proposed to revamp the entire procedure for handling the grievances and getting the Commission directly involved in the hearing of complaints and their resolution. Thus, counselors were brought directly under the members of the Commission and they were required to report and discuss all the complaints coming to the Commission. The Chairperson also that the Commission's involvement in the planning process has been less than optimal and this is an area, which needs serious attention. And since any input in the planning process requires information, it was suggested that gender profiles of all the states and Union Territories need to be prepared in different matters of employment, health, education, welfare, political participation etc and the Commission needs to take it as a priority exercise. The tenure of the fourth commission is marked by a series of consultation meetings and workshops on a range of issues including the ones mentioned above.

⁵⁸ Personal interview with Vibha Parthasarthy.

⁵⁹ National Commission for Women, Annual Report 1999-2000, See the Preface.

⁶⁰ Letter 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

Despite the fact that then Chairperson viewed redressal of women's grievances as the *raison d'être* of the Commission, the Commission's response to brutal violence on women in Gujarat in February 2002 and its silence on the issue of complicity of the State government in it, right in the beginning of its tenure, put a question mark on the credibility of the institution and once again brought the whole question of autonomy of the Commission into public debate. The fact that the Commission decided to work only on relief and rehabilitation measures for women and children totally glossing over the other aspects of violence, one of the most important being the redressal one and bringing the government of Gujarat to book, meant that the Commission was unable to take a stand on the issue of collusion of the state in the crimes inflicted on women and totally failed both in its role as a watchdog and monitoring body over the government and in protecting the interests of women.

Moving beyond an understanding of the Commission as a Chairperson centered body, the following section analyses the functioning of the Commission in specific areas of law reform and policy-making, both in terms of processes and actual outcomes.

REVIEW OF LAWS

One of the important functions of the Commission is to review from time to time the existing provisions of the Constitution and other laws affecting women and recommend amendments there, so as to suggest remedial measures to meet any lacunae, inadequacies or shortcomings in such legislation. The Commission has reviewed and suggested remedial legislative measures to 23 laws and sent their recommendations to Department of Women and Child Development (DWCD). According to the Report of the Parliamentary Committee on Empowerment of Women (2001-2002), out of the 23 Acts, Cabinet notes in respect of 4 Acts have been prepared and are under consideration; in respect of two Acts the amendments are being finalized and in respect of remaining Acts, the DWCD was consulting other concerned Ministries/Departments of Government of India.⁶¹ The NCW's own account of Action Taken reports in the same Report mentions that the suggested amendments to these Acts are at various stages of consideration of the Government in consultation with the concerned Ministries/Departments of the Government of India and the State Governments.⁶²

Normally, various departments and ministries of Government refer bills to the NCW for review and changes. The NCW on its own can also decide to suggest amendments to an existing law or propose a new law. In order to review the existing laws and to suggest new laws Expert Committees are constituted with any one member of the Commission as Chairperson. The other members of the Committee include experts in different areas of law and justice who are mainly from outside the Commission, coming from different areas like lawyers, academia, civil services and women's groups. The first Annual Report of the Commission gives 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 as to how these committees have been functioning and who all worked on these Committees in the following years. Though the Commission has been inviting and involving persons active with the women's movement in the process of reviewing existing laws and there have been national level consultations with the representatives of women's groups on certain Bills, there has been for various reasons great dissatisfaction amongst the women's groups with the manner of working of the NCW in this regard.

While review of the existing laws on women has been consistently a major area of the Commission's work, as one goes through the sections on Review of Laws and Legislative

⁶¹ Report of the Committee on Empowerment of Women (2001-2002), op.cit p.10

⁶² The Decade of Endeavour (1990-2000), National Commission for Women, January 2001, p.120 Since then the PNDDT Act has been passed.

Measures Affecting Women in the Annual Reports of the Commission, one finds that the Commission has not been able to develop institutional mechanisms to carry forward the work of each Commission. There is a very ad-hoc manner of working, with generally no continuity of work that is being done. No report mentions about the work done by the earlier Commission, the problems that it may have been facing, whether Government took any action in this regard, if not why or what should be done to carry forward the earlier recommendations made by the Commission. None of the Commissions treats itself as carrying forward the work of the earlier Commission as if each Commission is a separate entity in itself. For example, in the first three reports of the first National Commission for Women, the need for a new law on Domestic Violence was discussed and a new Bill titled The Domestic Violence on Women (Protection) Bill, 1994 was proposed to the Government. But the 1995-96, 96-97 and 97-98 Reports make no mention of this Bill. Interestingly, the 1996-97 Report boasts of taking up the herculean task of reviewing the 39 legislations concerning women as part of the Common Minimum Programme of the Government.⁶³ It obviously does not make any note of the work of earlier Commission with regard to some of the laws that this Commission also decided to take up. Again the 2000-2001 Report mentions of 17 laws that were reviewed during the year under report. The fact that the year 2001 was declared Women's Empowerment Year by the then ruling government, as part of government's agenda, the DWCD included in its must do list the review of various laws concerning women, recommendations on which had already been sent to the Department five years ago. Why the whole process is to be repeated again? What about the recommendations that have already gone to the Government? What has been the action taken by the government to the recommendations already sent? There were always two different explanations. While the Chairpersons and members of the Commission consistently complained about government's inaction, the Government stance was that proposals were sent to the National Law School, Bangalore and its suggestions were to be included in the final recommendations.⁶⁴

Though the Commission has been reviewing almost all legislations concerning women, we plan to take up a few of them with the objective to understand the functioning of the NCW in this regard as also to find out as to what extent the Commission has been able to push for the required changes working along with the women's movements and the governmental response to these efforts. Three major issues that have been picked up for the purposes of analysis are the one that have been the focus of the politics of women's movements in the last three decades.

Legislative Reforms relating to Domestic Violence

Two major issues that caught the attention of public and media in late seventies were rape and dowry related violence on women. Women's groups that emerged in the process discovered that violence that women suffer in marriage is not always related to demands of dowry, but to the fact that marriage itself is a patriarchal institution, which sanctions such violence, and women are beaten, tortured and killed because societal norms sanction this kind of violence. This was termed as domestic violence, which essentially referred to violence, by husband and in-laws. The women's groups addressed this issue in various ways at that point of time. They set up counseling centres, offered legal help, developed plays, songs etc. to highlight the issue, took out marches and held dharnas outside the houses of families who tortured or killed their women. At the same time they felt that there is inadequate or no legal redressal available in this regard. They addressed their demands to the State and asked for changes in existing laws. The result was review of dowry related legislation and inclusion of section 498(A) and 304(B) in the Indian Penal Code to deal with violence that women suffered at the hands of their marital family. The manner in which these two sections were worded was broad enough to cover cases of violence against women in the family not directly related to dowry. They also covered both physical and

⁶³ Annual Report 1995-96, National Commission for Women, p.4

⁶⁴ On the basis of personal interviews.

mental violence. Despite this since these changes came in the context of dowry related violence both the police and courts were unwilling to look at the issue of domestic violence independently from that of dowry related violence.

A few reviews on the working and the manner in which this law was being used, implemented and interpreted by the users, especially, by the police and courts revealed that the perception of women getting harassed and beaten only because of dowry demands persisted. Women's groups were feeling that there is need that at the level of society and law, the recognition of domestic violence independent of dowry demands gets recognized. Thus, the existing provisions of 498(A) and 304 (B) may have the scope to deal with the problem of domestic violence, the recognition of violence on women in families beyond dowry needed that a new legislation is formulated in this regard. The issue was raised in early 1990s and the Lawyers Collective⁶⁵ prepared a model law in this regard in 1991. In addition to the above the Bill also intended to deal with the relief that can be given to protect the women from violence and raised the issue of rights of women to matrimonial property. The Commission took note of this Bill and based on this drafted another bill in 1994 and sent it the Government for necessary action. The proposed Bill, basing itself on the model Bill provided to it by Lawyers Collective, for the first time tried to provide a civil as well as criminal remedy for preventing and tackling the issue of domestic violence. It also widened the definition of domestic violence by adding four new grounds of harassment and violence. (In addition to those grounds under Section 498 A of the IPC as cruelty, the Bill added the following to the definition of domestic violence: 1) harassment which causes distress to a woman, 2) any act which compels the woman to have sexual intercourse against her will either with her husband or any of his relatives or with any other person, 3) any act which is unbecoming of the dignity of the woman, 4) any other act of commission which is likely to cause mental torture or mental agony to woman.) The bill provided that any woman subjected to domestic violence can get protective order from the court. This order, besides retraining the husband from violence, can also direct that woman live separately from her husband and the matrimonial home be given to her to reside with her children. The court can also direct the husband or relative to pay maintenance to bear the expenses of living separately. The draft legislation also provided for the introduction of a new section 498B to the IPC to punish domestic violence with a term of imprisonment of up to three years and a fine.

There is no follow up of this Bill by the Commission for next many years till one finds in the 1996-97 Report that the Commission was again going to review all the 39 legislations pertaining to women. The Annual Report 1998-99 again asked for codification of law pertaining to domestic violence. (Interestingly this report was perhaps placed before the Parliament some time in the year 2002 as the Action-Taken report mentioned that "The Government has introduced the Protection from Domestic Violence Bill, 2002 in the Lok Sabha on 8th March 2002.") The 1999-2000 Annual Report without referring to the Bill that had already been sent to the government for consideration once again recommended for the need to have a comprehensive legislation that deal with criminal and civil remedies to violence within marriage. It also pointed out to "the vagueness of the term 'cruelty' that often creates difficulties for judge when making rulings." It asked for the need to elaborate upon definition of 'Cruelty' in Section 498A. Such repetitions reveal the manner and quality of work being done where one finds there is complete unwillingness to update with the work of the earlier commissions. This also shows that no systems have been developed whereby any continuity of work between one Commission to another could be ensured.

There also seems to be an overlapping of efforts between the women's groups and the NCW as the Government asked the NCW to send its observations on both the Bills in the year 2001. The Commission examined both the Bills and gave its recommendations.⁶⁶

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⁶⁶ Annual Report, NCW, 2000-2001, pp12-13

Despite all these efforts the Bill that the Government of India finally drafted and was planning to lay before the Parliament, titled as "The Protection from Domestic Violence Bill 2001" was not only disappointing but also dangerous in its implications on women victims. The major area of concern was the definition of domestic violence in the GOI bill. The Bill 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". Such a definition meant that a lot would be left to the individual perception of the judges as to what constitutes violence. In addition, condoning violence in self-defense or to protect one's property meant that the State was unwilling to look at the real dimensions of domestic violence. Passing the Bill in this form would have meant undoing of all the work of the women's movement on the issue of domestic violence. 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. The Bill contained no declaration of rights of women in the matrimonial house and property thereby ignoring the housing and monetary needs of women and children who are thrown out or made to leave because of such violence. The bill also contained many other objectionable provisions and seemed more tuned towards protecting the domestic harmony rather than giving redressal to women victims of domestic violence.

A delegation of representatives of several women's organizations met the then Minister of State for Women and Child development and the Law Minister and could get the assurance that Bill will be sent to a Standing Committee and the concerns of women's organizations will be looked into.⁶⁷ The NCW also made a critique of the Bill and asked the government to thoroughly review it taking into considerations all the objections that were raised before discussing it in the Parliament.⁶⁸

What is problematic in the whole process is that the two Bills that were there with the Government, the 1994 NCW Bill and the Lawyers Collective Bill contained totally different provisions from the GOI Bill (2001). The whole understanding of the issue and the question of women's position and rights in the family as one gathers from the GOI Bill was antithetical to those of the women's movement. The manner in which the Bill was introduced and probably would have been passed but for the strong resistance put up by the women's groups, is a clear example of the manner in which the government treats the issues of women and can disregard the demands of the movement and recommendations of an autonomous and apex body like the NCW.

Sexual Violence and Law Reform

Sexual violence on women has been a major area of concern for women's groups in India for more than three decades now. In 1980, the Supreme Court judgment in 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. Even before this case actually opened up a debate on many aspects of the issue, the cases of Rameeza Bee (1978) and Maya Tyagi (1980) had already brought to light the shocking role of police in both these cases of custodial rapes and killing of the husbands of these women by the police.⁶⁹ But the first organized feminist response to the

⁶⁷ See for details Saheli Newsletter, May-August 2002, pp29-31 and "Campaign for Civil Law on Domestic Violence, 2002, Update and Briefing", brought out by Lawyers Collective, Women's Rights Initiative.

⁶⁸ See Rashtra Mahila NCW Newsletter April 2002

⁶⁹ For details of the cases see 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, pp96-142. Nandita Gandhi and Nandita

question of legislative reform on sexual violence against women happened after the refusal of the Supreme Court to re-open the Mathura rape case. The Supreme Court judgment had declared that 'as there were no injuries shown by the medical report' the story of 'self resistance having been put up by the girl is false', and concluded that 'the alleged intercourse was a peaceful affair'. The judgment indicated the extent to which rape laws were biased against women placing the burden proof of rape on the victim and using the sexual past of the victim as a way of establishing consent in the act of rape. A nation wide agitation following this judgment forced the government to take the demand for change in law seriously and the Law Commission was charged with the responsibility to draft a new legislation after consultations with women's groups and others. The resultant Criminal law Amendment Act, 1983 did make some important changes in the law of rape but was a much watered down version of what women's groups had actually asked for. The suggestions of women's groups that were not included in the final law among other things were: deletion of section 155(4) of the Evidence Act, including rape by a member of upper caste on a lower caste woman and rape by a person in an economically advantageous position on a woman in a his employment or in a subordinate position in the category of 'custodial' or 'aggravated' rape and inclusion of marital rape.

While these areas needed to be addressed by the rape law, the experience with the reformed law pointed out that stringent punishment for the crime of rape had not proved to be a deterrent, conservative notions regarding women's sexuality continued while giving judgments, humiliating manner of cross examination of a woman in a rape trial remained areas to be seriously looked into. More importantly, the subsequent years also showed that even the definition of rape and sexual assault in the IPC was inadequate and needed to be worded to bring it closer to the experiences of the victims of sexual violence. The issue had gained currency because of the increasing reporting of cases of sexual abuse of children and judgments that were delivered in many of these cases using the very restrictive definition of rape and molestation to either let off the culprit or to justify very negligible punishments.⁷⁰

In 1992, the National Commission for Women had set up an ad-hoc Committee to make recommendations on the law relating to rape of minors. The Committee, which consisted of members of women's organizations, looked into the concerns discussed above and submitted its report in August 1993. While addressing that within the existing legal, social and political context, justice for rape victims seemed almost impossible, the sub-committee attempted to redraft the law relating to sexual assault in the Indian Penal Code. The committee suggested extensive changes in the laws relating to sexual assault which most importantly included recommendation 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 vagina and anus by other objects like sticks, bottles, etc. The committee also suggested broadening the definition of sexual assault to include words and gestures by a person with a sexual purpose. Making a minor person perform sexual act 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 or persons of economic and social dominance. It was also suggested that that the category of 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. The committee also suggested several amendments relating to

Shah, *The Issues at Stake-Theory and Practice of the Contemporary Women's Movement in India*, Kali for Women, New Delhi, 1991pp.36-10. Nandita Haksar and Anju Singh, *Demystification of Law for Women*, Lancers Press, New Delhi, 1986, pp70-80)

⁷⁰ Flavia Agnes, *State, Gender and the Rhetoric of Law Reform*, Research Centre for Women's Studies, S.N.D.T Women's University, 1995, pp10-85. Kirti Singh Law, Violence and Women in India, Study supported by UNIFEM and UNICEF, pp 13-33)

procedures to be followed in rape trials and suggested different punishments for different kinds of assaults.

The extensive recommendations made by the Committee could have acted as a basis for recommending far reaching reforms in all branches of law relating to rape and sexual assaults. Based on these recommendations the NCW prepared the Criminal Law Amendment Bill, 1994, which unfortunately included only cosmetic amendments to the rape law. These recommendations included raising 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 age of 8 and 18 years. Most importantly the amendments suggested by the NCW in no way changed the totally archaic, irrelevant and restrictive definition of section 354, which merely deals with criminal force or assault outraging the modesty of a woman. The women's groups have for long shown their discomfort with the language 'outraging the modesty' as it not only 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 and the hearing of rape trial to be presided over by a woman judge. There was also a suggestion to put a time limit on the trial. As the 1994-95 report indicates the Bill was with the Parliamentary Standing Committee and was sent back to the Commission for its comments. But the Annual Report 1996-97 does not make a mention of this process but listed out its concern over the alarming increase in incidents of rape in the country and the great difficulties that a rape victim has in getting justice. To quote 'the NCW strongly felt that 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 It further said, "The Commission had after taking all the above facts into consideration, proposed an ordinance to amend the rape laws". Based on the 1994 bill, the President of India passed the Criminal Law Amendment Ordinance 1996 incorporating these suggestions. The ordinance lapsed after six months as it was not passed by the Parliament.

One does not find any reference to the fate of this Bill/Ordinance in any of the subsequent report. (Reports available till 2001-2002). Rather one finds in the 1998-99 Annual Report of the Commission a mention about starting a country-wide project of debates and discussions on the existing laws concerning rape with a view to proposing workable amendments so that the relevant Bill could be presented to the Parliament as early as possible.⁷² The 1999-2000 reports refers to a study done by the NCW, based on the suggestions and recommendations ascertained in various workshops done all over the country, where the relevant sections of IPC, Code of Criminal Procedure and Indian Evidence Act were critically examined. The report said that before sending any proposal for reform in any law the Commission has been following a set procedure of taking into account the views of an Expert Committee set up by the Commission for the purpose. But in the present case, understanding the seriousness of the issue and to get wider opinion this more democratic process has been followed. It then just summarises the opinions obtained on various issues in the workshops held in 16 states. There is no mention as to what would be done with these opinions.⁷³ In the 2000-2001 Annual Report there is no follow up of

⁷¹ Annual Report, NCW, 1996-97, p.4

⁷² Annual Report, NCW, 1998-99, p.9.

⁷³ A report titled *Rape: A Legal Study* was brought out by the Commission from this process of country wide workshops. The report created a huge uproar amongst women's groups all over the country not only because of the report being factually wrong and the manner in which it treated the issue of rape and rape victims but even more importantly because it selectively used and interpreted historical sources that have the effect of promoting and legitimizing a particular ideological and communal viewpoint. The document put forward an extraordinary notion that till the 8th century A.D. women in India enjoyed a high status in society and their subjugation began from 8th century onwards as a result of foreign invasions. Women's groups demanded an explanation from the Commission whether it officially endorsed the idea that the patriarchal society emerged in India in the post 8th century and also whether it also endorsed the point of view of some participants in the workshops to restore the high status that women enjoyed as '*ardhangini*', '*grahlaxmi*' and '*dharampatni*'. For a detailed critique of the study see a note prepared by Kumkum Roy dated 31 July 2000. Women's

this study, though it mentions 17 others laws, which the Commission reviewed during the year under report. It is not clear as to what was the purpose of the whole exercise. It is no surprise that in its recommendations regarding amendments in various laws, the Bill on Sexual Assault did not find a place, since nothing was done to carry forward the process.

The manner in which issues are taken up and treated by the Commission indicate a great disparity between the women's groups and the Commission over their understanding of the various aspects of the issue. In addition there is neither any clarity on the issues involved nor any continuity of work from one Commission to the other.

Sexual Violence on Women in Gujarat Genocide 2002 and the Commission

While this process of deliberations and working on the draft of the bill was on, the Gujarat riots 2002 happened, wherein sexual violence unleashed on women was not only unprecedented both in scale and barbarism it also had the support and protection of the state government. Gujarat riots once again brought home the limitations of the present legal remedies as report after report pointed out that rape was not the only form of sexual assault and the 'incidents were not just random, impulsive or isolated incidents. They were widespread and preplanned.' In any case the fact of complicity of state agencies either actively supporting or protecting the assaulters was one reason why the existing legal remedies could not be effectively used and very few women came up to file the complaints. Again 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 much less grave.

Many civil rights and women's groups and concerned citizens groups that came together after the riots, made concerted efforts to raise the issue of sexual violence in situations of mass violence and 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. Working with the victims of sexual violence in Gujarat, women's groups actually took forward the debate on the issue of inadequacy of legal remedies in individual cases sexual violence in non-conflict situations to situation of mass violence where sexual violence is targeted and used as a core strategy to destroy the other. A belated and lukewarm response of the NCW and silence of the state and central governments on the whole issue was very frustrating. The Commission sent its team to Gujarat after about fifty days of continuous violence. The report that was released almost after two months focused mainly on the police excesses, poor conditions of relief camps and insufficient relief and 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 riots 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, there was also a deliberate omission to mention the minority community angle of the violence and the manner in which the women of Muslim community were targeted.⁷⁴ 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 about the relief and rehabilitation aspect and the need for civil society measures to instill confidence amongst women.

groups asked the Commission to dissociate itself from the study. See letter sent to the Chairperson of the Commission dated 20 July 2000, by National Federation of Indian Women.

⁷⁴ Report of the National Commission for Women on the Status of Women and Children in Gujarat.....

The report was just an account of bland observations of the members of the Committee without analyzing the issue in its political context. Women's groups who have time and again been showing their dissatisfaction on the manner of functioning of the NCW almost unanimously felt that they have been let down by the Commission in case of Gujarat.⁷⁵ The manner of response by the Commission in the above cases also needs to be seen in the context of the Commission's autonomy, an issue that has been taken up in the context of functioning of the Commission.

The Issue of Sexual Harassment

Another major area where the Commission put up efforts for quite some time is on the issue of sexual harassment. The NCW took up the issue of sexual harassment of women at the workplace as one of its focal issues in 1996. In December 1996, it commissioned a survey for women in both the organized and unorganized sectors to understand their problems and attitude when dealing with the issue. In August 1997, the Supreme Court in the matter of Vishakha vs State of Rajasthan held that sexual harassment at the workplace is violative of Article 14 and 19 of the Constitution and hazards posed by sexual harassment need to be removed for these rights to have any meaning. In the absence of specific laws to deal with sexual harassment at work place the court issued a set of guidelines – usually referred to as Vishakha Guidelines – to deal with the problem. Following this the NCW took up matter with the ministries of the Centre and the State governments to set up the Complaints Committees. In 1998, NCW formulated a Code of Conduct for Work Place putting down the SC guidelines in a simple manner. In quite a badly drafted code, which gave no definition of Sexual Harassment at workplace but just listed many things that can constitute Sexual Harassment, not only expressions like eve teasing retained, it also attempted to explain eve teasing and sexual harassment separately.

In 2001, that was declared Women's Empowerment Year, the NCW announced that the Commission was drafting a Bill on Sexual Harassment at Work Place. The Commission also held a number of meetings with some women's groups, public sector undertakings and college representatives. Women's groups working on the issue expressed and communicated their concerns and reservations about the draft Bill of 2000 to the Commission. The main objection of women's groups was that the Bill was not prepared in consultation with the women's organizations and had many loopholes. Many groups felt that the experience of Vishakha Guidelines and the functioning of Committees needed to be reviewed before bringing in any legislation. Amongst the women's groups there was also a debate on whether the law should be civil or criminal. The hastily drafted bill was circulated in mid 2001. The bill came up for intense criticism among women's groups all over the country for its loopholes and lack of foresight.

A delegation of women's groups after receiving a copy of the Bill from the Young Women Christian Association along with the information that the last date for giving recommendations on the Bill to the NCW was stipulated as 31st July 2001 met the Chairperson in this regard. They expressed their concern over the fact that most of these groups had not received any formal communication on the Bill from NCW. Concerns were also expressed on the nature of the process of consultations undertaken by the NCW that seemed quite arbitrary and excluded a number of organizations, which have been actively working on the issue. The delegation also pointed out that it is absolutely essential to take into account the experiences of groups working on promoting the Vishakha Guidelines since the last many years in any process of lawmaking in this regard. The delegation demanded district and state level consultations in order to rectify the lacunas in the Bill and that a national core committee including persons of legal background should be formulated to draft a model bill. After having got no response from the Commission even to this, on 12th November 2001, the women's groups from many parts of the country

⁷⁵ Interviews with members of various women's organizations

(Delhi, Mumbai, Goa, Calcutta, Bangalore, Manipur, Gujarat, Kerala) again in a letter addressed to Chairperson, NCW sent a summary of their reservations on the Bill. The letter was signed by about 21 women's organizations from all over the country.⁷⁶

Another round of meetings followed this letter. Women's groups once again gave a detailed note on the Draft bill. Some time in the beginning on 2003, it seemed that the Bill was being rushed through. The situation did not change in the following year too when once again the Commission called another National Consultation on Sexual Harassment at Workplace (Prevention) Bill, a Bill drafted by the NCW. Pathetically once again the draft bill did not incorporate the suggestions of the women's groups. The copy of the Bill that was sent along with the notice of the meeting was the same as the earliest version of the Bill. The same was brought to the notice of the Commission in a carefully drafted letter that so graphically detailed the process that has been going on since the year 2000, with NCW not heeding to the points raised by women's groups.⁷⁷ Women's groups once again mobilised before the meeting so that their point of view is heard. As a result of this mobilization the Chairperson was again forced to drop the move and make a Committee including the members of various women's groups to draft the Bill.

The whole process reflects not only an ad-hoc and arbitrary manner of functioning, but also on the quality of work. The process also revealed that lack of experience of the members of the Commission, both in terms of actual work on issues concerning women and the ongoing debates, gets reflected in differences in the perceptions, understanding and strategies of dealing with women issues between the NCW and the women's groups.

The only Bill recommended by the Commission that has been passed by the government in 2002 is the Pre Natal Diagnostic Technique (Regulation and Prevention) Bill. It seems more because of the continuously falling sex-ratio figure and because of the studies that pointed to the facts that the imbalance in sex ratio is more because girls are not being allowed to be born.

As far as the Commission's work with regard to suggesting amendments in the criminal law is concerned, one finds that Commission's understanding of many issues is at variance with that of the women's organisations. For example, in crimes relating to women the emphasis is more on enhancing punishments. In some cases the Commission is found to be contradicting its own stands. Thus, while taking a stand against death penalty for rape, in one of the suggested Bills by the Commission, titled 'the Prevention of Barbarous and Bestly Cruelty Against Women Bill 1995', it recommends death punishment to any person who commits such cruelty⁷⁸. Similarly, while opposing the Delhi (Disqualification of Membership) Small Family Bill 1996, it recommends that women employees having two living children will not be allowed to claim maternity benefits under the Maternity Benefits Act⁷⁹. There are also problems at the level of conceptualization. As mentioned earlier, in the 'Code of Conduct at Work Place' issued by the NCW, sexual harassment includes the term 'eve-teasing' that fails to include violence and discrimination aspects. It continues to use the vocabulary 'outraging the modesty of a child' in the context of sexual abuse of children, while also asking for some progressive legislation on the problem.

At the same time, a reading of the chapters on Review of Laws in the Annual Reports does not give a feeling of continuity of work in this area and they look quite disjointed. There is no information as to what is the status of earlier recommendations. Even the reports of the same Commission do not show any linkage with earlier reports. At the same time there have been huge delays on the part of the government in responding to the recommendations of the

⁷⁶ See Saheli Newsletter, January-April 2002, Bill on Sexual Harassment at Workplace: Yet Another Paper Tiger, p.11-12.

⁷⁷ Letter dated April 3, 2003 by Women's Groups to the Commission. Source *Saheli* Files

⁷⁸ For the proposed Bill on "The Prevention of Barbarous and Bestly Cruelty Against Women Bill, 1995" Refer Vol. II of the "A Decade of Endeavour" Report, National Commission for Women, p.15

⁷⁹ National Commission for Women, 'A Decade of Endeavour: 1990-2000, p.17

Commission on various laws concerning women. The reasons lay both with the delayed preparation of Annual Reports by the Commission as well as with the time taken by the Department of Women and Child Development in preparing the Action Taken Reports that have to be laid in the Parliament along with the Annual reports. The result is that even after twelve years of functioning the Commission seemed to have reached nowhere by way of making impact on policy making.

The above problems 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. The fact that the members of the Commission are political nominees who have not worked on women issues, they clearly lack any understanding of the issues. And 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 benefit to women under government's population control agenda and then reversing its decision under movement's pressure or making sweeping recommendations on Uniform Civil Code.

NCW as a Recommendatory Body on Policy-making

Section 10(c), (d), and (i) of the NCW Act elaborates on the recommendatory role of the Commission. Accordingly, the Commission is to make in its reports, recommendations for the effective implementation of safeguards provided in the Constitution for improving the conditions of women by the Union or any state and on legislative measures to meet any lacunae, inadequacies or shortcomings in the existing legislations and participate and advise on the planning process of socio economic development of women. Section 17 of the Act makes it mandatory for the central government to consult the Commission on all major policy matters affecting women. In addition to the Annual Reports there are a number of reports and studies that have been brought out by the National Commission for Women, wherein it has made a range of recommendations.

Normally the reports have not been submitted in time. Like the first report in 1995, the second in 1996 etc. etc. Then they have not been tabled in time. Action taken reports reveal that on most of the recommendations the only action taken is to refer to the relevant departments or Ministry. The latest detailed report on Status of Women brought out by the Commission as a follow up to the CSWI Report contains no chapter on recommendations.

The Decade of Endeavour (1990-2001) Volume II reports that the Commission has made more than 700 recommendations to the Government till the year 2000. The Action Taken reports for that period reveal that in most of the cases the recommendations are at various stages of consideration either at the state level or with various ministries or departments of the government.⁸⁰ The recommendations that were referred to as having been accepted were more in the form of providing financial assistance to different categories of women under various government schemes, conducting training programmes. Some recommendations made on women and media were also responded to by laying down some stringent laws and codes to curb the vulgarity, crime and obscenity through print and visual media.⁸¹ For almost all 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. The Commission has repeatedly asked the Government for the need for greater co-ordination between the concerned

⁸⁰ See Annual Report 2000-2001, National Commission for Women, pp.175-192 and A Decade of Endeavour 1990-2001, Volume II, pp.117-134.

⁸¹ Ibid., pp. 184-85.

ministries/Departments of Government of India and State Governments so that speedy action can be taken on the recommendations of the Commission.

In addition to the Annual Reports, the NCW has also brought out from time to time many reports prepared by its Expert Committees and/or in collaboration with organisations working in those areas, dealing with a wide range of issues concerning women from different sections and parts of the country. Some of the important reports of the NCW in the last one decade focus on the issues of Prostitution and child abuse and trafficking, on the status of Muslim women in India, on women prisoners, on issues and problems of women in Panchayats and on review of laws relating to women. In addition some reports have raised the issues of women's health and education, employment, need for awareness raising and gender sensitisation, social security and problems of mentally ill/disabled women, of scheduled caste and tribal women. All these reports while providing an analysis also give a number of recommendations to the Government for action. Unfortunately, the information regarding action taken by government on all the recommendations made by the NCW is not easily available. But a reading of various Annual Reports (which hardly report of any action taken by the government and the repetitiveness of many recommendations) indicate the non-seriousness of the State towards women issues. It also indicates the manner in which it treats a state agency like NCW. To quote the former Chairperson, Ms. 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".

The Commission has come out with some good reports like *Women Prisoners in Indian Jails*, *The Lost Childhood* and *Voice of the Voiceless: A study of Muslim Women in India*. None of the Reports have been taken up by the government. Recommendations on issues of tribal and scheduled caste women in areas of health, employment and education have also not been considered by the Government. The 1994-1995 Annual Report made concrete recommendations for women workers in the unorganized sector with regard to labour laws, which again have not been taken up by the government. There has been considerable dissatisfaction over the fact that the Action taken Reports have not been provided to the Commission in time⁸².

As to the fact 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 taken by the government. The Commission is not involved in the process of decision-making. The most glaring example of this has been the National Policy for Women that was prepared by the Department of Women and Child Development, under the Ministry of Human Resources, and was only later sent too the Commission for its comments. Similarly, in 1993, the Government of India appointed an Expert group the population policy that did not have any representative form the Commission. The Commission in its Annual Reports have consistently been pointing out that the Women Cells within each department or Ministry of the Government have not been functioning.

Surely, it has been the weakest point of the NCW that despite the fact that the Act provides for consulting the Commission on policy matters concerning women, the governments have not thought it mandatory to do so. The Commission has been treated as a purely recommendatory body whose recommendations are not binding. At the same time one also finds that Commission too has not asserted its position in this regard. In fact, if the Annual reports are any indicator – the recommendations seem to be very piecemeal. The chapter on Planning Process for Socio-Economic Development of Women, a standard one in all the Annual Reports supposedly

⁸² As to the Action Taken Reports on the Annual Reports submitted to the government, the commission has reportedly received Action taken reports only for the years 1992-93 to 1996-97. The Commission is yet to receive the ATRs for the years 1997-98 to 1999-2000. The 2000-2001 Report has been placed in the Parliament since then. The Action Taken Report for the same is still not available.

recommending on the socio economic development of women is the weakest if judged from the point of view of recommendatory role of the NCW on government policy making on women. In all the reports without any exception the chapter actually does not at all refer to the planning and the development process and its impact on women. It is focused on the reporting of various programmes and projects being run by the government, national and international conferences, seminars, meetings and workshops, campaigns, studies and state tours and visits undertaken by the Commission members. The recommendations in the chapter on Planning Process for Women in the 1993-94 Annual Report are focused only on establishing women studies centres, compilation of data on tribal women and training programmes for women. In the 1995-96 Annual Report, under the chapter "Planning Process for Socio-economic Development" the only recommendation was on developing books, curriculum and research material on women. The 2000-2001 Report just gives a reporting of various studies and visits made to different parts of the country with a view to obtaining *authentic cutting edge level information* (emphasis added) concerning the socio-economic development of women and gives a detailed statewise reporting of these visits and meetings.

In addition the recommendations of the NCW seem to be more protective and rehabilitative in nature and little emphasis is placed on the structural aspects and how to deal with them. For example, there is hardly any analysis on the impact of liberalisation and present economic policies on women especially in the unorganized sector except very briefly in the 1994-95 Annual Report. The changes that are taking place in the nature of labour, steady decline of the state sector and withdrawal of protective laws for working class and declining employment opportunities have serious implications for women. Section 10(i) of the NCW Act says that it is the function of NCW to 'participate and advise on the planning process of socio-economic development of women'. The reports of the last years indicate that neither the government nor the NCW are taking this role seriously. The NCW is being ignored by the Government on policy issues. The issue of property rights of women especially of rural women is another grey area with regard to issues that have been taken up by the Commission. In this regard the existence of religious personal laws that discriminate and deny equal rights in marriage and property to all women citizens of the country has failed to become the focus of the Commission's agenda. The problems of female foeticide, female infanticide and the other basic issues of education and inadequacy of medical and health services have also not received enough attention from the NCW so as to raise them at the policy level. Any analysis of budgetary allocations to social sectors in general and towards specific needs of women in particular has been sadly lacking in all the Annual Reports of the Commission.

The most important role envisaged in the NCW Act and envisioned by the women's organizations was the watchdog and recommendatory role of the Commission. In the performance of this role the Commission is expected to influence the policy-making process with a view to achieve the goal of gender justice. And it is here that the Commission has miserably failed. Clause 5, Section 16 specifically enjoins on the Government to "consult the Commission in all policy matters pertaining too women". This makes it mandatory and not optional that the Commission is consulted and involved in all the decision-making processes concerning women. As the above details indicate and as has been again and again complained by women's organizations as well as by the commission, the Indian Government has not made any efforts to involve the Commission with the planning and policy making process. The manner in which the recommendations of the Commission have been handled by the DWCD makes it apparent that the government does not take this apex body seriously. 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. While the government is at fault for not taking action on these recommendations, the Commission has also been sorely lacking in pushing its recommendations strongly with the Government.

The other important issue is of the nature of recommendations being made to the Government. Mostly the recommendations are piecemeal and are with regard to the programmes being run by the Government for the betterment of women. Though some of the recommendations regarding revival of Public Distribution System and bringing it under the control of women, about women prisoners, children in trafficking and giving insurance coverage to women in the unorganised sector are significant and if taken seriously by the government can go a long way in improving the lot of women in the country, but the larger issues of land distribution to women, improving women's rights in productive resources within and outside family etc. have not become the focus of Commission's recommendations. It has also been found that many times the understanding of the issues involved has been at variance with that of the women's organizations. This is to say that the working of the Commission does not many times reflect the experience of working on women's issues and rightly so because most of the members of the Commission do not come from the background of working with the women's movements. Coming back to the issues raised in the second and third sections, the composition of the Commission impacts on the quality of work done by it. As no mechanisms have been developed to institutionalize the body, each Commission seems to be working more or less independent of the other and has come to depend on the leadership provided by the Chairperson.

Section 5

Crisis Intervention Role of the NCW

One of the core areas of Commission's work relates to specific problems or situations arising out of discriminations and violence against women as enumerated under Section 10 of the NCW Act. Accordingly, the Commission is to look into complaints and take *suo moto* notice of matters relating to deprivation of women's rights, non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development, non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women, and take up issues arising out of such matters with appropriate authorities.

While investigating cases of violation of safeguards for women and complaints relating to deprivation of their rights, the Commission has the power of Civil Court trying a suit. The Commission can summon a person or examine the person on oath. It can bring parties to a dispute face to face and try to resolve by mediating. In case of a need it can also instruct the appropriate agency that had power to take some steps to attend to the matter and report back to the NCW. It can requisition documents and receive evidence on affidavits. In pursuance of these provisions in the Act, the Commission has been performing various types of functions ranging from informal counseling to advice and formal action.

While the NCW Act puts the responsibility on the Commission to take up individual cases of complaints of violence and discrimination against women, it left it to the Commission to decide as to how it intended to approach the whole issue and what kind of mechanisms it needed to create to deal with such complaints. The strategies designed to deal with social problems require an understanding of the complexities of these problems. Significantly, the Commission's understanding of reasons for violence on women especially in first three years of its working was far behind that of the women's movement and studies. The 1992-93 report observes that the tendencies for committing violence, atrocities and injustices against women generally have social, cultural and psychological basis. "They are rooted in greed for money, lack of trust, a false sense of superiority of a man over a woman. Feelings of insecurity, bad habits like drinking, gambling criminal or unsound mind etc also make person prone to inflict violence on others. A fear of

sharing property with women is one of the main reasons for inflicting violence in them..."⁸³ Such an understanding of the causes of violence on women fails to take note of the ideological and material basis of such violence on women and how it gets legitimatised in the social system.

Issues Relating to Crisis Intervention Role of the Commission

The role of the NCW as a crisis intervention body needs to be looked into from various angles. How the Commission itself visualized this role? How did the Complaints Unit function? What kind of skills and expertise are required to do deal with these kinds of complaints? And most importantly the perspective with which the cases are handled, whether the emphasis is on reconciliation, rehabilitation, resolution or strengthening women's position within the family, community and social and economic system? Has the Commission used the data, information and its experience of dealing with these complaints to make any policy interventions?

The issue as to what extent the Commission should be involving itself in taking up individual complaints of women has come up again and again during the last more than ten years of functioning of the Commission. There seems to be an underlying tension between Commission's responsibility regarding its monitoring and watchdog function and it's functioning as a body that redresses the individual complaints of violations of constitutional and human rights of women. The tension is largely because the latter task requires huge resources and infra structure and also raises the issue whether a national body at the top can and should actually handle this enormous work. At the same time there is a popular perception that this is the primary task for which the Commission exists. The tension is also because of the discrepancy between the perception and working of the Commission in this regard and the yardstick that woman's groups adopt to evaluate the functioning of the Commission. The women's groups accept that the Commission needs to attend to the individual complaints of women coming to it, but they believe that it cannot become the major thrust of Commission's work⁸⁴. As one looks at the functioning of the Commission, one finds that even at the level of the Commission, attending individual complaints has been viewed as a major responsibility of the Commission. The Commission has also been asking for more powers to enforce its orders. Because of the enormity of the work, decentralization of work in this regard also has also been demanded.⁸⁵

Complaints Unit at work

The Commission handled complaints of violence against women and other violations of the rights of women initially through a Complaints Unit. The unit did not have a regular staff for the purpose and consultants were appointed by the Commission to deal with these complaints. The consultants along with the Chairperson and Member Secretary were to collectively decide about the action on the complaint. There were normally no hearings and no counseling sessions were held either for the complainant or the accused. Mostly the method followed by the Commission was to write to the concerned authorities that could/should take action on the complaint.

The first Annual Report of the Commission gives a figure of 246 complaints received by it from allover the country. This number has increased manifold, despite the fact that since then eighteen State Commissions for Women have also been established. Presently the NCW is receiving more than 5000 complaints per year. The complainants come primarily from cities and a major number from Delhi and Uttar Pradesh. The complaints from rural areas are generally lesser in number. Similarly, there have been fewer complaints from poor and illiterate women

⁸³ See Annual Report NCW, 1992-93, pp37-38. Also Annual Report, NCW, 1994-95, p.20

⁸⁴ This came out quite clearly in my conversations with a number of women activist working eith various women's groups. 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.

⁸⁵ See Annual Reports, NCW, 1995-96 and 2000-2001

and majority of complaints have come from middle and lower middle class women.⁸⁶ While in the initial years no method was developed to make a classification on the nature of complaints coming to it, from 1997 onwards with the setting up of a Pre-litigation and Counseling Cell in the Commission, complaints were categorized in twenty-two broad categories⁸⁷. Surprisingly, these categories did not include the category of *domestic violence*. While this does not seem to be possible that the Commission has never received a complaint of domestic violence, no body was able to explain this omission.

Despite the fact that the Commission regarded redressal of complaints as a major task, the manner in which this task was handled reveals a very rudimentary/ad hoc approach. On the basis of analysis of Annual Reports of the Commission and from the discussions that were had with the counselors and members of the Commission, it seems that right from the beginning not much thought was given as to how to handle the complaints coming to the Commission. The infrastructure as well as the kind of space that is required when women come to the Commission with their problems was also not given any thought. The Commission did not seem to have much of clarity as what kind of cases it will deal with. The NCW at that time seemed to have decided to take up any complaints of women irrespective of whether they were complaints that were related to gender oppression or gender issues or not.⁸⁸

In the absence of any serious thinking as to how to run the Complaints Unit, who would coordinate its work, what kind of skills, space and infrastructure are needed for this kind of work, the functioning of the Complaints cell remained characterized by adhocism. In fact there were no counselors as such in the Commission from 1992-96. As pointed out earlier too, the Complaints Cell was working with the help of Consultants. On receiving a complaint, the consultant was to prepare a short note that was then circulated to the Chairperson, Member Secretary, members and all the consultants. This means that the Member Secretary and the Chairperson were included in all the decisions with regard to complaints coming to the Commission.

There is no clarity as to why the direct involvement of the Chairperson, members and Member Secretary was required for all the cases coming to the Commission, since these persons, because of their preoccupation with many other issues, are not expected to have sufficient time to look into the details and follow up of all the complaints coming to the Commission. As a result, right from the beginning of functioning of the Complaints Unit, the emphasis has been on closing the cases at the earliest.⁸⁹

The Commission started the Counseling cell with four full time and two part time counselors. A full time counselor is expected to deal with an average of four cases in a day. Because of the large number of complaints coming to the Commission, women's organizations are also requested to send their counselors to share the work. The complainants do not come directly to the Counselor. The complaints are first registered with the Section officer, who then decides to send the complaint to one of the counselors. As has been pointed out earlier, a large number of women are approaching the NCW for the redressal of their grievances. The basic presumption in using this institution as against the criminal justice system has been its status as an apex national body as well as its being out of the conventional legal system. There is generally a faith that the stature of this body will put pressure on other institutions of the state to ensure that they will attend to their grievances.⁹⁰ And this presumption has been true to a large extent. But the experience has also been a mixed one due to a variety of reasons.

⁸⁶ On the basis of interviews with the counselors and from the PRAJA Report, pp8-15

⁸⁷ Annual Report, NCW, 2000-2001, Annexure IV, p 206.

⁸⁸ *"Creating a Window to Redress Women's Grievances" Research and Documentation Project on Mediation, Counselling and Conflict Resolution*, Compiled by Saraswati Haider, Project Officer, PRAJA, March 2002, p.28 and interview with an ex-counselor.

⁸⁹ Ibid., and interviews with counselors and members of the Commission

⁹⁰ Personal interviews with some of the complainants and Counsellors.

In 1996-97 the Commission decided to add a Counseling Cell to the Complaints Unit (henceforth referred as CCC) with a view to provide an informal mechanism of redressal since a large number of women do not want to go to courts as they want reconciliation and look for mechanisms that can use counseling as a method to resolve their family disputes. In the same year, the NCW introduced the concept of Parivarik Mahila Lok Adalat with a view to provide speedy justice to women who suffer immensely on account of pendency of cases in courts. As for the working of Mahila Adalats, the target before the Commission was settlement of five lakh family disputes affecting women within a year's time. The total number of Adalats held during 1996-97 was twenty-five and each Adalat was expected to take up about 100 cases.

The Marginalised Presence of the CCC within the Commission

Despite the fact that the Commission considered attending to individual complaints of women as one of its major tasks, the CCC continues to remain marginal to the NCW. The marginalisation of the cell within the NCW can be understood from the manner in which it is located in the hierarchy within the NCW, from the facilities given to it to do its work efficiently, the interaction with the Chairperson and members and from the manner in which its work is seen as an input into the larger work of the Commission. In the words of a Counselor who is no more working with the Commission, the Counseling Cell is positioned very low in the hierarchy, while another one said that it is nowhere in the hierarchy⁹¹. The work of counselors is not viewed as skilled and valuable work that gets reflected in the conditions in which they work as well as in their service conditions.

As is evident the work started in a routine fashion and as the name of the Commission started becoming familiar the number of women coming to the NCW started increasing. This did not match with resources provided to the Cell. The Complaints Unit and the Counseling Cell (CCC) is located in a big hall with separate tables for different counselors. A part of the hall also accommodated the Administrative section, the Cash Section and the Registration Section of the CCC. (The registration section was later removed from the hall some time in 2001-2002) There is constant commotion in the hall and also a constant talking and shouting around the tables of the Counselors who are to listen to the complaints of the women coming to them. The privacy and undisturbed attention required to listen to a complainant is out of question in such an atmosphere. The tables of the Counselors are full of case-files and no systems were developed to document this information or to keep proper records of the cases coming to the Commission. Compared to this, the members, Chairperson and Member secretary of the Commission have all been given separate and well-furnished large rooms.

This was well put in the report brought out by Penal Reform and Justice Association (PRAJA). To quote, "The contrast between the lower (executive) and upper (Administration) floors of the NCW is striking. The staff at the Administration level where the CCC is located attributes this to a class division and they express this in their behaviour. Counselors have often remarked on this."⁹² Counselors have pointed out that it is they who need separate rooms so that privacy could be ensured and women coming to them can be made more comfortable.

The counselors are quite unhappy with their service conditions too. The counselors have generally been appointed on contractual basis for a period of three months. Initially, the counselors were being paid a lump sum salary of Rs. 10,000/- per month, for a six-day week, with no facility of any kind of leaves, casual, medical or earned. (This amount was arbitrarily reduced to Rs.7,000 by the third Chairperson of the Commission, and was later restored but not

⁹¹ From interviews with Counsellors.

⁹² PRAJA Report, op.cit., p.40.

before some of the Counselors decided to quit their jobs at the Commission) If for any reason they are unable to come to work, deduction from salary are made according to the number of days one is on leave. For all practical terms they work like daily wagers. There has been a lot of dissatisfaction over six-day week among other things, more especially because all the administrative staff, members and Chairperson of the Commission are not required to come on Saturdays. It is only the daily wagers, mostly the class four category of workers and the counselors who are required to come on Saturdays. Resentment over this gets translated into making Saturdays as non working days even if the counselors are to come on that day as practically no work takes place on that day. This leads them to make comparisons with the higher-level staff on other things too. The working and service conditions of the counselors reflect low priority and recognition being given to their work.

The marginalisation of the CCC is not only evident from the poor working and service conditions of the counselors, but is also reflected in the fact that the higher levels of the Commission have shown little interest in the working of the Counseling Unit. Though the tenure of the second Chairperson did see some thinking and initiatives in terms of first adding a Counseling Unit to the existing Complaints Unit and then establishing Parivarik Mahila Lok Adalats with a view to speedy redressal of complaints, the efforts did not go beyond that. In 1999, during the tenure of the third Commission an effort was made to review the functioning of the Cell. The decision to do this was the outcome of a joint workshop on New Models of Accessible Justice. The deliberations during the Workshop pointed to the failure and damage caused to women by the agencies of the criminal justice system. The fact that the formal justice machinery is complex, cumbersome and inaccessible to women as they faced injustices in their everyday lives or in particular situations, required that more accessible and less formidable mechanisms are provided to women. Thus mediation facilities and counseling as methods to prevent situations leading to criminal acts, as alternatives to formal mechanisms need to be strengthened. With this in view, it was thought that the experiences of the counseling unit of the NCW that was already working in this direction be documented and improvements suggested to better its functioning.⁹³ The review work was given to an NGO named, Panel Reform and Justice Association and Penal Reform International that was also looking for some simple models of justice providing forums. This is the only review available so far of the functioning of the Counseling Cell of the Commission. Without going into the approach followed for this whole exercise, one can say that the review report raises some important issues and gives some good suggestions to improve the functioning of the Cell. Unfortunately, except for some cosmetic changes, nothing much was done that could bring the Cell to the centre of the functioning of the Commission even after the report of the PRAJA.

As with other aspects of the Commission's work, the counseling and complaints redressal work of the Commission has thus not received serious deliberations beyond creating certain mechanisms or making some superficial changes. As a result, the work of the CCC has remained completely detached from the overall work of the Commission. The work of counselors has not been treated as professional work and work of value. The counselors are not sent for any workshops, conferences and seminars that would help them in knowing more as well as increasing their understanding of issues and concerns which may further help them in dealing with the complaints. Even otherwise the lack of interaction between women's groups and the counselors deprives them of all the opportunities of exposure in many ways. Also most of the work of counseling and dealing with complaints is done from the office. Counselors generally are not sent to homes or to places where violations have taken place. While dealing with the complaints the counselors come in touch with the ground realities of the everyday lives of women including their rights in the present legal system. In the process they come to know as to how their problems are perceived at the legal level and how effective the redressal systems are? The experience so gained has never been utilized at any level by the NCW, neither for the purposes of further

⁹³ *"Creating a Window to Redress Women's Grievances" Research and Documentation Project on Mediation, Counselling and Conflict Resolution*, Compiled by Saraswati Haider, Project Officer, PRAJA, March 2002.

research nor for making any interventions for purposes of law reform. They are not made part of any expert committees dealing with review of laws or legislative enactments or even in deliberations that take place over any issue of legislative reform. While some of the counselors feel that the only ongoing work of the Commission is that being done by the CCC, this work is not getting consolidated as an input into the larger role of the NCW.

The general feeling among the Counselors is that they are unfairly treated and exploited. This has affected their work considerably. There is emphasis on closing cases since the number of cases handled by a counselor is important in her getting considered for continuation in the Commission as a counselor.

The counselors do not seem to work as a team and there is no system of regular meetings where the cases are discussed so as to work out strategies as also to deal with other kind of problems associated with working on these complaints. There is generally no interaction with women's groups with regard to counseling work being done by the CCC of NCW beyond request to send counselors to help in case work.

The work culture of the CCC reflects the work culture of a typical government office in India. The Review Report of the manner and method of working of the CCC by Penal Reform and Justice Association that was brought out after a painstaking assessment of the complaints received by the NCW, pointed out that there was no methodical and detailed documentation of the complaints coming to the Cell. A large number of files were missing, while many were mixed up with general administration files. There were no proper records to indicate about the follow up action on the complaint or whether the complainant's grievance was redressed or not.⁹⁴ Even a cursory visit to the Complaints cell of the NCW reveals the shabby way in which the records/files are lying on the tables of the counselors. The counselors complain of huge burden of work and pressure to perform in terms of number of cases they deal with little or no infrastructural facilities available. They, therefore, put the blame on higher levels. There is a general frustration over the manner in which the whole counseling work and counselors are treated by members and Chairperson as also on the different kind of facilities and perks available to them and the counselors.

The functioning of the Complaints and the Counseling Cell of the NCW is affected by its immediate context in which it is embedded, i.e. the set up of the Commission and there is also the larger context of society, from where the complainants come and where the strongest of patriarchal forces are at work.⁹⁵ This 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. This means that the Counseling Cell can have an effect on the larger set up of the Commission and can effectively contribute towards its functioning. But this can happen only if the Cell is made central to the functioning of the Commission and is not working at its margins.

Clearly, the problem is not merely inadequacy of resources and infrastructural facilities; it is much more to do with the location of the CCC in the larger set up of the NCW as well as with the overall work culture of the NCW. It is also to do with the lack of any clarity on the role of counseling unit. The work culture of any section of any organization is reflective of the overall work culture of that organization. Since the Commission itself lacks any sense of purpose and quality work, it means that any improvement in the functioning of the CCC would not only require changes in the set up of CCC but also at the same time in the NCW set up.

⁹⁴ For details see *ibid*, pp33 - 79.

⁹⁵ 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.

The NCW has not made any effort to make any assessment of the work being done by the CCC. The Annual Reports of the Commission cite only the cases where the intervention of the Commission was 'successful'. The NCW till date has not made any analysis of the other cases as to what happened to them. One only gets a category wise enumeration of cases at the end of Annual Reports. This categorization too for no apparent reason omits the category of domestic violence.⁹⁶ Thousands of cases that have been handled by the Cell are a goldmine of information on the issue of violence against women, an issue that has been at the centre of women's movements.

Clearly the Commission has not taken the work of the Counselling and Complaints Cell seriously and therefore, has not made any efforts to develop on that work. Except for giving a few used computers to the CCC, nothing substantive has been done to improve the functioning of the Cell. Instead, there has been a constant demand from the Commission that in view of its experience with cases of violence against women, there should be a Commissioner for Women's Rights as an investigating agency. Demand for the post of Commissioner for Women's rights with necessary infrastructure and powers were made for the first time in the 1994-95 Annual Report. The demand seems to have been made both with a view to decentralise Commission's work as also to do this work more effectively and efficiently. Accordingly, an Expert committee on Law and Legislation constituted by the NCW was constituted to prepare a draft bill making appropriate amendments in the In addition to this, the draft bill also recommends more penal powers to the Commission in the course of the exercise of its investigation powers under Section 10(4) of NCW Act. A proposal to amend the Act on the lines of this draft Bill⁹⁷ was discussed in a meeting between the representatives of the NCW and the Secretary of the DWCD on 19.07.2000. No action has been taken on the matter since then.⁹⁸ Some of the members and counselors also suggested that the powers of the Commission with regard to enforcement of its orders also needed to be strengthened.

The fact that the reported crime against women has increased over the last ten years indicates the inability of the Commission to reduce violence against women or to improve the conditions by way of law reform or otherwise that can strengthen the position of women vis a vis patriarchal and gender discriminatory forces operating at various levels.

There has been a mixed response to the effectivity of the CCC in dealing with complaints coming to the Commission. There is a general acceptance of the fact that NCW being a national level body created by the government gives it a stature so that the police officers and other relevant government servants in the exercise of its powers under section 10 (4) take it seriously. At the same time the experience has mostly not been very positive. As mentioned earlier the reasons lay not just with the powers and position the Commission but also with the manner of its functioning. There has also been a feeling that the Commission normally does not take *suo moto* notice of cases, more especially in cases involving large number of women. Women's groups have repeatedly complained to the Commission for not taking note and effective action in cases of women affected by communal and caste violence.⁹⁹

⁹⁶ PRAJA Report mentions that there was considerable resistance by the Section officer in-charge for not including this category. op.cit. p. 25. When I talked about this to a few members and counselors they did not seem to know why it has been dropped.

⁹⁷ Annual Report (1995-96), NCW, pp.3-4 and Annexure III.

⁹⁸ Report of the Committee on Empowerment of Women(2002-2002) on Functioning of National and State Commissions for Women, Ministry of Human Resource Development (Department of Women and Child Development), Lok Sabha Secretariat, New Delhi, pp. 10-17.

⁹⁹ Letters to Chairperson of the Commission by Women's Organisations, dated 23.03.1993 and 15.02.94 NFIW and AIDWA files. The delayed and biased response of the Commission to the Gujarat genocide, where Muslim women faced worst kind of brutality, has been discussed in the previous chapter.

CONCLUSIONS

The need for a national level body to raise women issues and to make effective interventions at the law and policy making levels with a view to ensure governmental accountability towards issues concerning women 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.' Clearly, the women's groups visualized such a mechanism very differently and they had high expectations from it. It is important to point out that the creation of the NCW unlike many other such bodies is closely tied up with the interventions of women's movements that tried to influence the decisions relating to the powers and positions as well as the role envisaged for the institution. Thus 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 government, it was essential that the Commission is an autonomous body.

Though the demand for a national Commission was originally raised in 1974, by the time it was established in 1992, the country had witnessed not only a vibrant women's movement that focused its demands on the state asking for state accountability, but the period also witnessed two other major processes. One was a steady decline of institutions of governance and the other being a gradual withdrawal of the state from social sectors under the processes of liberalisation and globalisation. It was for these reasons that some women's groups and activists expressed their reservations at the time of the setting up of such a body. Many of them quoted the examples of other such national Commissions meant for the oppressed and marginalised sections of such as the Scheduled Castes and Tribes, which were expected to work as autonomous institutions have been reduced to weak and ineffective bodies. The governments overtime have not given any serious consideration to their recommendations.

The present picture of the NCW indicates that though the Commission was created with a lot of hope and expectation 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 of the matter is that it stands distanced from them. The organizations feel disappointed and frustrated over the functioning of the Commission for a range of reasons and it is noteworthy that the organizations had started raising their concerns within a year of the Commission's working, through letters written to the Commission. There were complaints and dissatisfaction over the manner of response of the NCW over various issues that has been at variance with their feminist politics, over the fact that the Commission has been ignored by the government on policy issues and over the ad hoc manner in which the women's groups have generally been asked be part of any consultative process. The most important issue has been with regard to the status and autonomy of the Commission resulting from its position as stipulated in the Act.

The Commission lacks autonomy and in the performance of its role has been restricted by its institutional design. The manner of its composition has disabled it in developing into an autonomous body and has affected the quality of its work too. The NCW Act does not lay down any minimum requirement for members and has not stipulated a procedure of selecting the members with the result that the selection process is in total control of the party in power. This process has failed to ensure the selected persons are known for their work in the field. They are all essentially government and political nominees. 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 become convenient spaces for politicians and bureaucrats to be absorbed.

The issues regarding the powers of the Commission were raised at the time of its creation. The women's organizations took serious note of the loopholes that remained at the level of the NCW Act. While more powers with regard to the status and autonomy of the Commission would definitely have strengthened it, but it is equally important as to how the given powers are used by the Commission. There is a general feeling that the Commission has not made an effective use of the powers granted to it by the Act. 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 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." The Commission has remained subordinate to the DWCD both administratively and financially. Funded by the state should not have made it subordinate to the government.

The most sore point of the Commission's working is with regard to its role as a policy recommendatory body. The NCW Act makes it mandatory for the governments to involve the Commission in the policymaking process and take action on the recommendations of the Commission. But hardly on any issues is the NCW consulted. In fact all the exercise is done earlier and the Commission is only informed about it later. The recommendations given by the Commission in its Annual and other Reports have also not been taken seriously. 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 it to a mere recommendatory body without ensuring any accountability of the government.

While it is true that the autonomy and effectivity of the Commission are constrained by various provisions of the Act, it is also true that the Commission has not been able to assert whatever powers it has. The Commission has been criticized for not raising women's issues effectively with a view to influence state policy or raising strong voices over governmental apathy to its recommendations.

The mandate given to the NCW under the Act indicates that a proactive role has been envisaged for it. The women's organisations had also envisioned the role of the NCW in a similar way. While it may not be an easy task, there is definitely scope and possibilities for Commission to play a much more important role. The relevance of any institution gets strengthened by some bold initiatives that it takes, that reveal the potential of the body too. But at no time the Commission was able to fulfill its mandate and effectively use the powers that have been given to it.

As has been discussed the effectivity of Commission has come to depend on the personality of the Chairperson. The Commission has become a Chairperson centered body 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 and understanding and political affiliation of any Chairperson. As a consequence, though the Commission is a permanent body, no institutional arrangements have been evolved to ensure continuity of work done by various Commissions.

Internally, thus, the Commission has not been able to develop a system of work as also a work culture. The problems are not just regarding perspectives on women issues because mostly the members and Chairpersons have been found wanting in their experience of working on women issues or with the women's movements and are largely selected due to their political affiliations.

The composition of the Commission being such these members are also found to be wanting in their understanding and accountability towards women issues. Most of the members are either ill informed or uninformed about the issues concerning women. Many of them were seen as making most of their selection as members/chairpersons of the Commission by way of taking the maximum benefits from the facilities and perks available. The day-to-day functioning of the Commission and quality of Annual and other reports of the NCW bear testimony to this. Most of the Reports, especially the Annual ones are highly substandard, in terms of their content, language, editing mistakes etc. The reasons for this lay in the fact the work is not being taken seriously.

One cannot assess the success or failure of any institution independently, isolated from the general crisis. If the larger political context does not allow autonomous functioning of national machineries created to raise issues of governance and state accountability, how can mere creation of institutions like the NCW ensure the betterment of those sections of the society for which they are created? Overtime there have been efforts to resolve the issues of accountability and non-performance of governments by establishing more and more Committees and Commissions. Explain more.

The issue of will of government assumes crucial importance here. Despite the fact the last three decades have witnessed a number of initiatives by various governments with regard to women issues, the manner in which the issues have been addressed, as already pointed out, have mainly been symbolic gestures of 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 governmental programmes and policies that fail to address women issues with in them through gender lens. This puts a question mark on the intentions of the state in dealing with women issues. 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.

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 too have not been given any due consideration by various departments and ministries of the government. There is a tussle for power between the Department of Women and Child Development and NCW where the Department has constantly tried to keep its control over the Commission both administratively and financially. From the point of view of the government the Commission was never intended to be autonomous as was absolutely clear from the manner of appointment of the members and Chairperson of the Commission as stipulated in the Act. Autonomy of the Commission was crucially linked to the selection process and right in the beginning women's groups lost at that. The women's organisation did not see the Commission as a merely a recommendatory body but always maintained that it is mandatory on the part of the government to consult the Commission on all policy matters affecting women, the Commission has got reduced to a mere recommendatory body.

The last more than twenty years are characterized by two important developments that have had a major impact on the lives of women in the whole of South Asian region. One is the growing influence of communal and conservative ideologies and forces and their impact on women of various communities both in terms of increasing the patriarchal control of family, community and religious leaders of the community on the daily lives of women and in terms of increasing

physical violence on women that they face as belonging to any specific community. Second is the globalisation process that again has had a negative impact on the economic well-being of women. An inevitable result of this globalisation process has been a growing unorganized sector with a maximum concentration of woman labour force with in it. The Commission's engagement with the state on issues of falling budgets in areas of health, education and welfare services (though highly inadequate and needing a lot of improvement by way of implementation have still been crucial especially for poor women in their daily lives) 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 impact of state policies or critiquing governmental approaches on issue of violence on women or reproductive rights of women.

As for the complaint redressal and counseling work of the Commission too, there has not been much success. Some feel the NCW should not take up individual cases. It should only take up case which can have larger implications, like a fall out of a judgment, communal violence or cases from place where there are no state commissions. In this area the record of the Commission has been a mixed one.

None of this should imply that the commission is just in no position to take any initiatives by way of making an impact on policy making or just in taking some issues forward. In fact many women 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 female construction workers, Mahila sarpanchs, women in prostitution etc. have helped them to take their campaigns forward and to extract from governments some minimal concessions. 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 (grassroot woman worker of the programme).¹⁰⁰ The Commission, by siding with the women's organizations in not accepting the Population Commission's recommendation on disqualification of elected members of Panchayats (Check) played an important role in checking the government in its population control designs at the expense of women. The Commission also took up the issue of reservation of seats for women in Parliament and Legislative Assemblies in a big way. Some good reports like "Voice of the Voiceless: Status of Muslim Women in India", on conditions of "Women Prisoners in Indian Jails" and "The Velvet House: Sexual Exploitation of Children" speak of good quality work of the Commission. The Commission has tried to review, investigate and examine government policy at different levels and, though with a very 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. The Commission can definitely use its position through its mechanisms of reporting and by taking firm stands on issues to contribute to and guide debates at the level of society and policy makers on issues of social concerns.

The range of work that the NCW is doing affects its performance- More infrastructure and decentralization of work is required.

Again the question of autonomy—if persons are appointed as part of political patronage it becomes difficult to confront government.

Gujarat has put questions on the credibility of the Commission.

One view point is not to give any more powers to the Commission only the method of appointment has to change. The powers that are already there are not being used by the Commission. They are giving them up.

100

The Commission has not asserted itself for non acceptance of its recommendations.

A highly bureaucratic structure.

Need to network more with the women's groups.

NCW can/should have made effective interventions in areas like short stay homes, shelters, childcare facilities etc.

Legal section needs to be strengthened

Lack of Vision. There are no defined goals. No system has been developed to work towards any defined goals and so there is no continuity.

Intervening agency between government and the women's groups
Inadequate term (Some raised the issue of compatible team.)

Burdened with issues

Issue is more of competence than powers

How much is the presence of NCW among women of India.

One chairperson shared her frustration with the irresponsible attitude of members. Members were not willing to give reports of their tours. When pressed for that they gave awful reports. Being at the national level requires some understanding of issues and commitment to work. Members don't know their powers and functions. They do not even look at the Act. No work Culture. Very Chaotic atmosphere.